UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:	)	Docket No. 3:17-BK-3283(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Commonwealth of Puerto Rico, *et al.*	)	November 22, 2021
Debtors,	)	

In Re:	)	Docket No. 3:17-BK-3566(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Employees Retirement System of the Government of the Commonwealth of Puerto Rico,	)	
Debtors,	)	

In Re:	)	Docket No. 3:19-BK-5523(LTS)
	)	
	)	PROMESA Title III
The Financial Oversight and Management Board for Puerto Rico,	)	(Jointly Administered)
as representative of	)	
The Puerto Rico Public Buildings Authority,	)	
Debtors,	)	

CONFIRMATION HEARING - DAY SEVEN

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

ALL PARTIES APPEARING BY VIDEOCONFERENCE AND TELEPHONICALLY

For The Commonwealth of Puerto Rico, *et al.*:	Mr. Martin J. Bienenstock, PHV Mr. Brian S. Rosen, PHV Mr. Michael T. Mervis, PHV
For Puerto Rico Fiscal Agency and Financial Advisory Authority and the Governor of Puerto Rico:	Mr. Peter Friedman, PHV Ms. Maria DiConza, PHV

APPEARANCES, Continued:

For The Lawful Constitutional Debt Coalition:	Mr. Susheel Kirpalani, PHV
For Ambac Assurance Corporation:	Mr. Dennis F. Dunne, PHV Ms. Atara Miller, PHV
For Financial Guaranty Insurance Company:	Mr. Martin A. Sosland, PHV
For National Public Finance Guarantee Corporation:	Ms. Kelly DiBlasi, PHV
For The Official Committee of Retired Employees:	Mr. Robert Gordon, PHV
For Cantor-Katz Collateral Monitor,LLC:	Mr. Douglas Mintz, PHV
For AmeriNational Community Services, LLC:	Mr. Nayuan Zouairabani Trinidad, Esq.
For Peter C. Hein:	Mr. Peter C. Hein, Pro Se
For Suiza Dairy Corp.:	Mr. Rafael A. Gonzalez-Valiente, Esq.
For Finca Matilde, Inc.:	Mr. Eduardo J. Capdevila-Diaz, Esq.
For Vaqueria Tres Monjitas:	Mr. Gerardo A. Carlo-Altieri, Esq.
For Maruz Real Estate:	Mr. Alexis Fuentes-Hernandez, Esq.
For the Official Committee of Unsecured Creditors:	Mr. Luc A. Despins, PHV
For PFZ Properties, Inc.:	Mr. David Carrion-Baralt, Esq.
For Assured Guaranty Corp. and Assured Guaranty Municipal Corp:	Mr. Mark C. Ellenberg, PHV

APPEARANCES, Continued:

For Sucesion Pastor Mandry Mercado:	Mr. Alexis Fuentes-Hernandez, Esq., for Mr. Charles A. Cuprill, Esq.
For U.S. Bank Trust National Association and U.S. Bank National Association:	Mr. Ronald J. Silverman, PHV
For Service Employees International Union and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America:	Mr. Peter D. DeChiara, PHV
For Credit Unions:	Mr. Enrique M. Almeida, Esq.
For Mapfre PRAICO Insurance Company:	Mr. Jose Sanchez-Girona, Esq.
For Underwriter Defendants:	Mr. Howard Steel, PHV
For Arthur Samodovitz:	Mr. Arthur Samodovitz, Pro Se
For Asociacion de Maestros de Puerto Rico and Asociacion de Maestros de Puerto Rico-Local Sindical:	Mr. Jose Luis Barrios-Ramos, Esq.
For the Ad Hoc Group of Constitutional Debtholders:	Mr. Andrew Kissner, PHV
For American Federation of State, City, and Municipal Employees:	Mr. Kenneth Pasquale, PHV Ms. Sherry J. Millman, PHV
For Quest Diagnostics:	Mr. Brett Fallon, PHV
For Amador:	Ms. Maria Mercedes Figueroa y Morgade, Esq.

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I N D E X

San Juan, Puerto Rico

November 22, 2021

At or about 9:30 AM

* * *

THE COURT: Buenos dias. Would the video participants please turn your cameras on, and would the courtroom deputy please call the case?

COURTROOM DEPUTY: Good morning.

The United States District Court for the District of Puerto Rico is now in session. The Honorable Laura Taylor Swain presiding. Also sitting, the Honorable Magistrate Judge Judith Dein. God save the United States of America and this Honorable Court.

In re: The Financial Oversight & Management Board for Puerto Rico, as representative of the Commonwealth of Puerto Rico, et al., Case No. 2017-BK-3283, PROMESA Title III, 2017-BK-3566, and 2019-BK-5523, for Further Confirmation Hearing.

THE COURT: Thank you.

Again, good morning. Welcome back, counsel, parties in interest, and members of the public, and press who are observing today's proceedings by Zoom video connection or are listening by telephone.

Today we will hear the parties' closing arguments in connection with the motion of the Oversight Board as

representative of the Title III debtors for confirmation of the Modified Eighth Amended Plan of Adjustment for the Commonwealth of Puerto Rico, the Public Buildings Authority, and the Employees Retirement System. After those arguments, we will proceed to a hearing on the application, pursuant to Title VI of PROMESA, for approval of the proposed Qualifying Modification of bonds issued by CCDA; and then to a hearing on the application, pursuant to Title VI of PROMESA, for approval of the proposed Qualifying Modification of bonds issued by PRIFA.

To ensure the orderly operation of today's virtual hearing, once we turn to our Agenda items, all parties appearing by Zoom must mute their microphones when they are not speaking, and turn off their video cameras if they are not directly involved in the presentation or argument. When you need to speak, you must turn your camera on and unmute your microphone on the Zoom screen.

I again remind everyone that, consistent with court and judicial conference policies and the Orders that have been issued, no recording or retransmission of the hearing is permitted by anyone, including but not limited to the parties, members of the public, and the press. Violations of this rule may be punished with sanctions.

The joint informative motion setting out the sequence of speakers for today's closing arguments concerning the

proposed Plan of Adjustment was filed as docket entry no. 19309 in case no. 17-3283, and it is available to the public at no cost on Prime Clerk for those interested.

I encourage each speaker to keep track of his or her own time. The Court will also be keeping track of the time, and will alert each speaker when there are two minutes remaining with one buzz, and when time is up, with two buzzes. Here is an example of the buzz sound.

(Sound played.)

THE COURT: If your allocation is two minutes or less, you will just hear the final buzzes.

I'll be calling on each participant during the hearing. If you wish to be heard when I haven't called on you, please use the "raise hand" feature at the appropriate time. The "raise hand" feature can be accessed by selecting the reactions icon in the tool bar located at the bottom of your Zoom screen. After you have finished speaking, you should select the "lower hand" feature.

Please don't interrupt each other or me during the hearing. If we interrupt each other, it's difficult to create an accurate transcript, but having said that, and as usual, I apologize in advance for breaking this rule, as I may interrupt if I have questions, or if you go beyond your allotted time. If anyone has any difficulty hearing me or another participant, please use the "raise hand" feature

immediately.

This morning's session will go until 12:50 Atlantic Standard Time, which means we will break at 11:50, or ten minutes to 12:00 Eastern Standard Time, and we will have a ten-minute break at approximately 11:15 AM Atlantic Standard Time, which is 10:15 AM Eastern Standard Time. Then we will resume from 2:10 PM Atlantic Standard Time, which is 1:10 PM Eastern Standard Time, and have an afternoon break as well.

Would everyone except the representative of the Oversight Board please turn their cameras off now, and when we reach your argument item, or I call on you, you'll turn the camera back on. Thank you all so much.

On Friday, the Court issued an Order concerning specific issues to be addressed at the Confirmation Hearing. That was docket entry no. 19308 in case no. 17-3283. It directed the Oversight Board to address three issues that have a bearing on the Court's analysis of the factual and legal issues it is tasked to resolve in this case, including two questions posed in connection with the potential for a ruling that Takings Clause claims are not dischargeable, except for those arising out of the purchase, sale, or holding of bonds. I did so in the interest of the time sensitive nature of these proceedings, and the need for the Oversight Board to be prepared to respond to possible adverse rulings on such issues.

At this point, the Court's preliminary view is that there are potentially meritorious, nondischargeable Takings Clause claims that the Plan currently treats as unsecured eminent domain and inverse condemnation claims. At this point, and I've not reached a final decision on anything, but at this point I'm not persuaded that any of the other Takings Clause claims raised in the objections to the Plan are likely to be determined to be both allowable and nondischargeable.

I am looking forward to the responses of the Oversight Board, and the comments of the other interested parties on the issues identified. I note that late last night the Oversight Board filed a supplemental declaration of Mr. Herriman, and also some demonstratives labeled "Responses to the Court's Inquiries." At this point, I'd ask the Oversight Board's counsel to elaborate on that, and, particularly, to explain whether they are tendering the additional declaration and/or Mr. Herriman at this point.

Good morning, Mr. Bienenstock.

MR. BIENENSTOCK: Good morning, Your Honor. Martin Bienenstock of Proskauer Rose, LLP, for the Oversight Board, as the Title III debtors' representative.

Your Honor, for the closing this morning, my partners Brian Rosen, Michael Mervis, and I will handle it. And I actually am going last, except for we wanted at the outset to respond to the Court's inquiries.

Your Honor, is this on the clock, so I can turn on my own stopwatch, or can I answer your inquiries before --

THE COURT: You're not on the clock yet.

MR. BIENENSTOCK: Thank you, Your Honor.

So the responses to the Court's inquiries are as follows. First, in respect of the requested findings of fact and conclusions of law -- and conclusion of law at paragraph 41 at docket entry no. 18739, the Oversight Board withdraws that request, so that is moot.

THE COURT: Thank you.

MR. BIENENSTOCK: That referred to prior plans.

The Court's second inquiry was whether the inverse condemnations claims are included in Class 54, and, if so, what document provides for the classification and treatment of inverse condemnation claims within Class 54. Your Honor, the one section 1.213 of our proposed Plan defines eminent domain proceedings as a proceeding commenced by the Commonwealth or one of its agencies. Only eminent domain claims qualify within that definition. Inverse condemnation claims would be in our general unsecured class.

Now, that's not to say that they all agree with that. I think there's some inverse condemnation claims that claim they're eminent domain claims, et cetera. But as far as our classification, the eminent domain claims are Class 54, and the inverse condemnation claims are within Class 58 for all

general unsecured claims.

In terms of Mr. Herriman's declaration, we do request that it be admitted into evidence. What it shows, Your Honor, is that the pure eminent domain claims may be as small -- based on his review of the proofs of claims docket, may be as small as approximately 50 million dollars, but if expanded to include all of the inverse condemnation, other claims, it could go as high as almost 400 million dollars. His declaration is at ECF no. 19329.

If I may have share screen privileges, Your Honor, we want to now go to Your Honor's question about whether the Plan would still be feasible if Your Honor determines that some or all of the eminent domain and inverse condemnation claims are nondischargeable.

THE COURT: So are you moving the Herriman Declaration into evidence now, or do you want to do that after you do your demonstrative?

MR. BIENENSTOCK: Now, Your Honor.

THE COURT: All right. So before we go to your sharing of screen, are there any objections to the receipt of the Herriman Declaration? If you object, please raise your hand.

I see an objection from counsel for the Creditors Committee. That's Mr. Despins I believe. Or a "hand raise".

MR. DESPINS: Yes, Your Honor. Good morning.

I apologize. It's not an objection. There is just a clarification I think in paragraph ten of that declaration, because there's use of -- I don't want to be critical, but of loose language saying that the Suiza claims would be general unsecured claims. It doesn't say which class. We just want to make sure that they're not in our class, they're not in 58. So it's not an objection to the declaration.

Maybe Mr. Bienenstock can clarify that, because it doesn't say which -- that they're not in 58. So that's the only issue we have, is that we don't want, by our silence, a finding that the Suiza claims are in Class 58. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Bienenstock, would you like to respond?

MR. BIENENSTOCK: Yes, Your Honor.

That's a fair point, and Mr. Despins is correct. It's not in the general unsecured claim. It's in the dairy producer class.

THE COURT: All right. So, on the record, you are not tendering that factual reference to the Suiza claim as being in Class 58, and, rather, acknowledging that it is in the dairy producer class, correct?

MR. BIENENSTOCK: Yes, Your Honor. Exactly, Your Honor.

THE COURT: Okay. So now there is another hand raised of Mr. Carrion for PFZ.

MR. CARRION-BARALT: Good morning, Your Honor.

THE COURT: Good morning.

MR. CARRION-BARALT: David Carrion on behalf of PFZ Properties.

We are looking at the document that was submitted this morning, 19329, and, unfortunately, we have to object to that document, because even though it identifies a number of claims, they do not show where or how they got to that number. Our contention is that, you know, we don't know if they are using the one dollar value for -- that they use for voting purposes or what, but our claim alone is 75 million dollars. And there's no way that I can identify that being either one of the two paragraphs, either paragraph eight or nine.

THE COURT: Mr. Bienenstock?

MR. BIENENSTOCK: As a practical matter, Your Honor, it's in nine. And Mr. Herriman is here to testify and be cross-examined, but I think -- I think that claim is covered in our numbers.

THE COURT: All right. Well --

MR. CARRION-BARALT: With that clarification, we take away our objection, Your Honor.

THE COURT: Thank you.

Let's see, was there another hand? No.

Very well then. The objections having been withdrawn, with the information having been clarified, the supplemental declaration of Mr. Herriman, which is filed at docket entry no. 19329 is admitted into the record as evidence for the Oversight Board.

(Whereupon the Herriman Declaration admitted into evidence.)

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: Thank you. Now you can proceed, Mr. Bienenstock.

MR. BIENENSTOCK: Okay. Just before we share screen, Your Honor, I want to give the big picture quickly. Based on Mr. Herriman's declaration, but also based on the estimate of Class 54 claims in the Disclosure Statement, the claims are no higher than 400 million. Even if they are unsecured, as we believe they are, all of them, the Plan provides for payments of somewhere between 20 and 40 cents, depending on the amount of allowable claims at the end of the day for those claims.

So if they're paid just 20 cents, 20 cents of 400 is 80, so that would be a maximum whole of 320 million dollars that we would cover. And that's if they're all allowable, and we have the minimum distribution to unsecured claimholders.

And what I'd like to do now, Your Honor, quickly, is show Your Honor evidence already in the record to show that we

can handle that from a feasibility point of view. And I see that --

THE COURT: I'm sorry. Just so that I'm clear, are you saying that you -- if they were allowed as unsecured claims, the value would be approximately 20 percent of 400 million, or are you saying that the value would be 400 million if they were -- if the takings characterization and the argument of these claimants that the claims are nondischargeable were upheld?

MR. BIENENSTOCK: Your Honor, what I'm saying is if the claims were unsecured, the Plan already provides for a payment to them of at least 20 cents, which would be 80 million, leaving a whole of 320 million if Your Honor ruled that all of them were nondischargeable. So I just wanted to show the maximum gap that we'd have to cover for feasibility purposes, and that's about 320 million dollars.

THE COURT: Thank you.

MR. BIENENSTOCK: If I could --

THE COURT: You're sharing now.

MR. BIENENSTOCK: Yes. I'm trying to click to move to the first slide, and it -- oh, there we go.

Your Honor, what the screen shows now is Debtors' Exhibit 30, which shows remaining cash, after making all effective date Plan distributions, there would be remaining cash of 532 million dollars.

The next screen, Your Honor, shows that in the first year -- this is Exhibit One to Gaurav Malhotra's Supplemental Declaration. This shows that in the first year there is an annual surplus projected of 200 million dollars. Between the 532 million and the 200 million, we would be able to cover the 320 million, which would be the maximum whole if all 400 million dollars were ruled as nondischargeable.

Now, that's not to say that we otherwise wouldn't use that money for other important purposes, whether it's increased contributions to the pension trust, or otherwise, but we have the excess available money to handle it. And that's why we think the existing record does show the Plan would continue to be feasible, notwithstanding a ruling that all 400 million of the claims are nondischargeable.

Additionally, Your Honor, Mr. Malhotra is available today and tomorrow should the Court think that, you know, the record should be enhanced further on that feasibility issue, but the debtor does contend that the evidence I've just showed shows that the Plan would continue to be feasible even if the Court ruled the 400 million were nondischargeable.

On the subject of feasibility -- I'm sorry, Your Honor. Okay. There are two other issues that go to feasibility that were raised. One was raised last week in argument, Your Honor, and one is more recent even than that.

Your Honor will recall that there was an argument on

behalf of the teachers that there is no treatment of their rejection damage claim for the freeze imposed by the Plan, and Your Honor was also told that what they do get is nothing but a return of their own money. What the slide up now, which is 1.487 of the Plan, shows is that --

THE COURT: Why aren't you covering this point in your closing?

MR. BIENENSTOCK: Oh, I can do that. I was only doing it now, because Your Honor raised feasibility issues, but I can cover this in the closing, Your Honor.

THE COURT: Yes. I'd prefer that you come back to this one in closing, since it's not an issue that I specifically --

MR. BIENENSTOCK: Okay. That's fine, Your Honor. In that case, then, if it's okay, I will turn things over to my partner, Brian Rosen, to start our closing argument.

THE COURT: Not quite yet, because I have another off-the-clock question for you and for AAFAF.

MR. BIENENSTOCK: Sure.

THE COURT: So late last week, AAFAF filed two pleadings. One is 19319, in which AAFAF objects to the inclusion of Acts 80, 81, and 82 to the list of statutes to be preempted in Exhibit K of the Plan. So unless you are planning to cover this in your closings, would you explain your position, the Oversight Board's position as to the legal

propriety of adding 80, 81, and 82 to that list at this stage?

MR. BIENENSTOCK: Your Honor, I am most definitely planning on covering that in the closing --

THE COURT: Okay.

MR. BIENENSTOCK: -- in terms of why those statutes must be deemed preempted. I can give the legal propriety of including them now, and --

THE COURT: No. I'll wait for the closing on that.

I see that Mr. Capdevila has his hand up, and so, Mr. Capdevila --

MR. CAPDEVILA-DIAZ: Good morning, Your Honor. For the record, Eduardo Capdevila on behalf of Finca Matilde, Inc.

Yes, with respect to Mr. Bienenstock's -- the document he shared on screen, I don't think the question was answered as to -- I understood that there is enough money to make the Plan feasible if the Court determines that the whole, entire amount is nondischargeable, but I don't think it was clear if it would be at the effective date, or deferred cash payments, or within the Plan, or outside the Plan.

THE COURT: Mr. Bienenstock, did you mean to be specific about that?

MR. BIENENSTOCK: Well, first, the excess cash of 532 million shows that we have the cash on hand at the outset on the effective date. As a practical matter, Your Honor, these claims, almost all are disputed. And we don't anticipate that

there would be a cash need on the effective date for all of them, but we have it just in case.

THE COURT: Thank you. So you are not making a proposal to pay them in full. You are showing that you would be able to pay them in full, but anticipating litigation challenging the allowability of the claims on the merits; is that correct?

MR. BIENENSTOCK: Yes, Your Honor.

THE COURT: Thank you.

Does that answer your question at this point, Mr. Capdevila?

MR. CAPDEVILA-DIAZ: Yes, Your Honor. Thank you.

THE COURT: Thank you.

Mr. Friedman for AAFAF also has his hand raised.

MR. FRIEDMAN: Yes, Your Honor. It's Peter Friedman from O'Melveny & Myers on behalf of AAFAF.

Your Honor, we did file the objection on Saturday. That was before, technically, the Board had submitted its amended list of statutes that was filed last night, but we didn't want to wait until it was actually filed.

I was also going to address some components of our position with respect to that during my closing argument, which is largely in support of the Plan, except for this last-minute inclusion. Would you like me to make those remarks now, or would you prefer that I include those as part

of my closing, which is scheduled for I think after Mr. Kirpalani speaks?

THE COURT: I would prefer for you to include them in your closing, but I would also ask you whether you are planning to cover in your closing some clarification as to whether you are asking the Court to strike the modified pension reserve funding mechanism in the current version of the Plan and/or the ten-year defined benefit restoration prohibition provision in the proposed Order accompanying the current version of the Plan? Are you going to be dealing with those issues in your closing as well?

MR. FRIEDMAN: So, Your Honor, I think with respect to the defined benefit plan issue, we don't object to the substance of it. We are unhappy with -- the government is unhappy -- well, we object to it I think as a policy matter, but we are not objecting to its inclusion in the Plan.

With respect to the other issue, which I believe is the one that the unions objected to last week, we are sympathetic to the points they raised. We negotiated certain language with the Board which, from our perspective, was the least bad of solutions to the extent that it winds up being kept in. We obviously wanted those provisions for which we negotiated.

So, obviously, if the Court concludes that the union objection should be overheld, that would be fine with us --

THE COURT: Thank you.

MR. FRIEDMAN: -- should be upheld, not overheld. Sorry about that.

THE COURT: Overruled you meant?

MR. FRIEDMAN: Yes -- if it's sustained, if their objection is sustained, that's fine with us.

THE COURT: Thank you. Now I've caught up with you.

MR. FRIEDMAN: Yes. Thank you.

THE COURT: Thank you, Mr. Friedman. So we will look to hear from you further during your closing arguments.

So at this point I am ready to turn to the closing arguments, and I thank counsel for those responses to my questions in advance of closing argument. So the first speaker will be a speaker for the Oversight Board. We have a total of 65 minutes allocated for the Oversight Board's closing argument.

Mr. Rosen.

MR. ROSEN: Yes, Your Honor. Good morning.

THE COURT: Good morning.

MR. ROSEN: It's 65 minutes -- I thought we actually have 90 minutes, spread across openings and rebuttals.

THE COURT: Yes. So what I have here that we took from the Agenda was 65 minutes for the initial, and then another 25 for the rebuttal. So is that how you meant to

split it?

MR. ROSEN: Yes, Your Honor. Thank you.

THE COURT: Okay.

MR. ROSEN: Your Honor, good morning. Brian Rosen, Proskauer Rose, on behalf of the Oversight Board.

Your Honor, I want to thank the Court for the opportunity to address the Court this morning, and despite the plethora of declarations, memoranda, and prior oral arguments, it is our goal here to attempt to bring it all together for you. And hopefully my effort, and those of Messrs. Mervis and Bienenstock, will assist the Court in the determination regarding confirmation of the proposed Plan of Adjustment.

Before I begin, Your Honor, I just want to go back a little bit in time to last evening. And I know the Court already referenced a few things, but as the Court is aware, we filed last evening a modified Eighth Amended Plan, which incorporated the changes that I had stated on the record last Wednesday, and Monday before that.

Likewise, we filed a proposed -- an amended proposed Confirmation Order, which similarly contained the representations that I put on the record on Wednesday. And I would also say, Your Honor, that we filed an amended or updated Plan Supplement, and as noted, Your Honor, in that Plan Supplement, while it does contain the latest forms of the documents that would be needed for the effective date

consummation of the Plan, we do note, Your Honor, that those are just the latest drafts.

There are conversations still ongoing. I participated in one lengthy one yesterday. And we are sure, just like what happened, Your Honor, in the context of the COFINA confirmation, that we will need to file an amended Plan Supplement with updated forms of those documents.

Additionally, Your Honor, you'll recall that last week when we spoke I requested that we keep the evidence open, so that we could provide the Court with two certifications by the Board in connection with the filing of the Plans of Adjustment, the one that was on November 12th, Your Honor, and the one of last evening.

And, Your Honor, we have, in fact, filed those with the Court, and the Plan as well. And those are marked as Exhibits 147, 148, and 149. And we have provided those, Your Honor, with copies to all of the parties. And I would like the Court at this time to accept those three exhibits into evidence.

THE COURT: Are there any objections to the tender of new Exhibits 147, 148, and 149? If you object, raise your hand.

I see a hand raised by Mr. Hein. Mr. Hein.

MR. HEIN: Yes. If these are the three Plan documents that were filed last night, I don't object as such,

but I would just note, though I was able to pull them up last night, there certainly hasn't been much time to review them.

THE COURT: I gather from Mr. Rosen that these are certifications relating to the Plan documents, rather than the Plan documents themselves, but I'll let Mr. Rosen speak for himself on that one.

MR. ROSEN: Your Honor, yes. One is the Modified Eighth Amended Plan itself that was filed. The two others were merely the certifications by the Oversight Board which authorize the filing of those, and they are consistent with, and almost verbatim, Your Honor, similar to the prior certifications that we filed each and every time that the Oversight Board authorized the filing of an amended plan. Those, of course, are already in the record.

THE COURT: And so you are tendering them for --

MR. ROSEN: In compliance, Your Honor, with 314.

THE COURT: For compliance, and for the record now, and that does not preclude someone from later disputing the substance, or making some other complaint about the particulars of their contents; is that correct?

MR. ROSEN: Yes, Your Honor.

THE COURT: So, Mr. Hein, with those clarifications, do you object to my receiving 147, 148, and 149 in evidence?

MR. HEIN: That's fine, Your Honor. I just wanted to be clear that I, and probably others, have not seen them.

Thank you.

THE COURT: Yes. Thank you.

If there is anyone else who wishes to object, raise your hand.

I see no other hands raised, and so Debtors' Exhibits 147, 148, and 149 are admitted in evidence.

(At 10:03 AM, Debtors' Exhibit Nos. 147, 148 and 149 admitted into evidence.)

MR. ROSEN: Thank you, Your Honor.

Last evening, Your Honor, we filed with the Court at ECF no. 19328, and served on all the parties, a demonstrative to be used in connection with this closing presentation. And I would like to, excuse me, share that with the Court on the screen at this time.

Hopefully, Your Honor, this will help the Court and others to follow along today. The presentation is broken into three portions, Your Honor, and while some of the portions that I have, which is part one, will be treated in depth, others, Your Honor, will be included just for reference points for the Court and the parties.

In our efforts, and as requested by the Court last Wednesday, Your Honor, we have attempted to marshal the evidence and the law to establish that the requirements for confirmation of the Plan of Adjustment have been satisfied. We have cited portions of the record, and to the extent

necessary, applicable law.

Of course, Your Honor, all of this should be viewed in connection with the Omnibus Reply and memorandum of points and authorities that the Oversight Board has filed in support of Confirmation of the Plan.

Your Honor, so, how did -- I'm sorry. Are we able to share at this time?

THE COURT: You've just gotten permission to share.

MR. ROSEN: Thank you, Your Honor.

So, Your Honor, how did we get here? Your Honor, years of borrowing and the incurrence of the liabilities lead in 2016 to 74 billion of debt, and approximately 55.2 billion of indebtedness. And of course, Your Honor, this lead to the passage of PROMESA -- the passage of PROMESA and the appointment of the Oversight Board.

And upon its appointment, Your Honor, the Oversight Board immediately took the task, announced the process for developing and certifying fiscal plans, designated entities as covered entities, requested financial information, and began to develop an overall strategy for the implementation of critical energy and infrastructure projects.

And, Your Honor, approximately eight months later, the Oversight Board, with the concurrence of the Governor, filed Title III cases for two of the three debtors which are the subject of the Plan of Adjustment: The Commonwealth on

May 3, and ERS on May 21 of 2017. And of course, Your Honor, you're well aware that, during these Title III cases, there was devastation, turmoil, and a pandemic that hit the island. Specifically, Your Honor, we had the hurricanes in September of 2017, the political turmoil leading to the resignation of the Governor, earthquakes that hit in 2019 and 2020, and then of course the pandemic that took hold of the island in March of 2020.

In the face of this, Your Honor, however, the Oversight Board continued doing its tasks, certifying fiscal plans, working with the government to address issues that would lead to more efficient government services for the island residents, and to promote economic growth, and to put Puerto Rico back on the path to prosperity. But, Your Honor, a lot of this took place amidst the backdrop of the various litigations that were commenced by various creditor groups, and, to a certain extent, Your Honor, also by the Commonwealth, and by the Creditors Committee by its side.

Your Honor, these are listed on this particular page, and I don't really need to go through them, because I know the Court is extremely well aware of each and every one of them. These are the ones, however, Your Honor, that were specific to the GO-PBA creditor groups, and inclusive of those, Your Honor, are those related to the PRIFA BANs. There was similar, Your Honor, litigation that had been commenced

actually in 2017, and in 2017 and beyond by the ERS bondholders, and by the Oversight Board, including whether or not the bonds were issued in an ultra vires fashion context with respect to liens and security interests, whether or not the ERS bondholders were entitled to an administrative expense claim, challenges to PayGo itself, and then a challenge against the Federal Government, Your Honor, that was filed in the Federal Circuit Court.

Similarly, Your Honor, there were a multitude of litigations that were commenced, and we refer to these casually as the Revenue Bond litigation. And as Your Honor knows, these go to, most notably, the clawback claims that were started in connection with HTA, CCDA, and PRIFA, and these were the tussles that took place between the Monolines and the Oversight Board, Your Honor.

As part of all of this, Your Honor, however, during the Title III cases, the Court appointed a mediation team lead by Chief Judge Barbara Houser, and while the Chief Judge and the mediation team first tackled the COFINA-Commonwealth dispute, and that lead to the confirmed Plan of Adjustment which became effective in February of 2019, shortly after that, Your Honor, the mediation team got together with the Oversight Board -- got together with the Oversight Board and GO-PBA creditors. And we were able to enter into a plan support agreement in May of 2019, and this then lead to the

filing of PBA on September 27 of 2019, a Plan of Adjustment, and a corresponding Disclosure Statement.

However, Your Honor, the mediation team was not done at this point in time, and as I said during my opening statement, the mediation team lead further discussions with the Late Vintage GO bondholders. If the Court might recall, the initial plan provided that it was really going to be left to future litigation, what would happen with the Late Vintage bondholders. But this of course would lead to numerous pieces of litigation, and the mediation team thought it best to try and develop a broader base of support.

And that lead to more mediation sessions, Your Honor, a plan of adjustment, and disclosure statement, and a new plan support agreement in February of 2020. But of course, Your Honor, at this point in time, the pandemic hit, and while the Court had already established a time period for consideration of the Disclosure Statement, everything was put on pause in the beginning of March of 2020.

This lead, Your Honor, to more mediation between the parties, between March of 2020, because -- and the Court, in fact, Ordered the parties back to the mediation table. And over the course of the next year, Your Honor, this lead to formal and informal discussions, and ultimately to a February 21 Plan Support Agreement that was reached by the Oversight Board with the same GO-PBA bondholders, Syncora, one of the

monolines, and Assured and National, two additional monolines.

They did join on a contingent basis, however, Your Honor, and as part of that, Your Honor, it provided for a stay of all of the litigation. And as I like to do on the next slide, Your Honor, all of that liti -- excuse me, Your Honor. All of that litigation -- let me keep going past here, Your Honor. I apologize.

Can you go to slide 13, please? Thank you.

All of that litigation goes away, Your Honor, as part of the GO-PBA settlement that was reached in February of 2021. At the same time, Your Honor, the litigation that had been outstanding in connection with the PRIFA BANs, and also the PRIFA BANs taking litigation that was commenced in another Federal Court went away as part of the February 21 Plan Support Agreement.

Similarly, Your Honor, starting, as I noted before, in 2016, there was all of the litigation -- excuse me, Your Honor. We're having a problem with the court allowing more people in and interrupting this. I don't know if we could stop that?

THE COURT: Apparently the issue is that if we give you "share screen", as you requested, we don't have a way to keep chat from your group showing up in the public display, and so maybe you all can communicate with each other by text or some other vehicle, rather than using the chat function

among yourselves in Zoom.

Let me just make sure that I haven't overstepped my technical competence.

I'm told that that is the problem, so text each other, please.

MR. ROSEN: Your Honor, we're told that it's the cohost. It's not our side. We'll keep trying, Your Honor.

THE COURT: Okay. Hold on just one second.

So for you to be able to share, you had to be made a cohost. Therefore, I guess you are seeing any messages that are directed to the host, which is us, but we can't give hosting over to you entirely. So I'll just ask that people who are inclined to try to write us notes from the waiting room, email the PROMESA registration e-mail address rather than putting it in the chat, so that we can have the least disruption.

We will put another three minutes on the Oversight Board's time, because we used it to address these technical difficulties.

MR. ROSEN: Thank you, Your Honor. If I may continue?

THE COURT: Yes, please.

MR. ROSEN: So, Your Honor, as I noted before, there was a lot of litigation that had been started in connection with ERS bondholders, both up and down the spectrum from your

court, to the First Circuit, even an effort to go to the Supreme Court at one particular point in time.

Your Honor, in March and April of this year, the mediation team again got the parties back together, and that resulted in a stipulation entered into with the ERS bondholders that provided for all of that litigation to go by the by, of course subject to confirmation and consummation of the Plan of Adjustment.

Your Honor, as I noted before, also, the contingent aspect of the February 21 Plan Support Agreement, Your Honor, was with respect to Assured and National; and immediately upon the execution of that, Your Honor, the mediation team and the Oversight Board got together with Assured and National to try and address some of their remaining issues.

THE COURT: Let's hold on a minute.

Okay. We made that phone line go away.

MR. ROSEN: Thank you, Your Honor.

So, Your Honor, as part of that process, we engaged with Assured and National to try and reach closure with them, remove the contingent aspect of it, and of course, Your Honor, this lead to the HTA-CCDA Plan Support Agreement. And as part of that, all of the litigation to which Assured and National were a party was removed.

Your Honor, that left, as the Court knows, as the remaining monolines still in dispute, Ambac and FGIC. And

while the HTA-CCDA Plan Support Agreement -- and I will get to this in a little bit -- set the pathway for the clawback claims recoveries pursuant to all of the clawback entities, the discussion that then ensued with the benefit of the mediation team and with the development I would say by Ambac and FGIC, was with respect to an accelerator for the recovery with respect to the clawback CVI that would be dedicated towards PRIFA. And this, of course, was focused on the Rum Tax cover over.

The parties, on the eve of the Disclosure Statement, Your Honor, did reach an agreement. It was announced to the Court, and, in fact, the Court adjourned the Disclosure Statement hearing for two weeks to allow us to paper that. And the Plan Support Agreement was entered into, Your Honor. Ambac and FGIC executed joinders to the prior plan support agreements. And the remaining litigation that was there with respect to the revenue bonds was put on hold, and would go away, Your Honor, as part of confirmation and consummation of the Plan of Adjustment.

Your Honor, during the course of these Title III cases, and as I noted before, the Unsecured Creditors Committee has been a party to multitudes of the litigations with the Oversight Board, on the one hand, and the GO-PBA creditors and other parties. Each time they have come in either as an intervener, or with respect to -- as a

co-plaintiff, as they were in the context of the PBA litigation.

And although the UCC was such a party, it always acknowledged that the Oversight Board had the opportunity to compromise and settle these things, as it did in the context of the Plan Support Agreements, subject to the rights of the Unsecured Committee to object if it so thought was appropriate. And of course that did not occur, and has not occurred.

Similarly though, Your Honor, the UCC has been involved in the resolution of or reconciliation of general unsecured claims, and as part of that process, they've also been actively engaged in trying to bring about additional recoveries for creditors. As part of the Plan process, Your Honor, there was a significant negotiation, though, as to the overall amount of funds that would be available to general unsecured creditors, and of course the classification of general unsecured claims that would be outside, or should be outside the purview of the general unsecured claim recovery. Those negotiations lead to the Committee agreement, Your Honor, and as part of that, there was an agreement reached with the Unsecured Committee and an overall support of the Plan.

Your Honor, I did note in my opening arguments, also, that there had been agreements with the Retiree Committee, and

with respect to the resolution of those claims. And, likewise, there had been an agreement with AFSCME that had been reached, Your Honor, in connection with pension payments and a new collective bargaining agreement. Those, of course, were resolved, and they have no objections with respect to the Plan.

That lead us of course, Your Honor, to the retire -- excuse me, to the DRA parties, and with the benefit of the Court's decisions that had been rendered in October, October 29th, Your Honor, we were able to reach an accord with the DRA parties. And all of the litigation that you see referenced here goes away, Your Honor. They now support the Plan of Adjustment. They have stated that support on the record, and the recoveries that they will be receiving will be as -- that they are entitled to pursuant to either the Title III Plan of Adjustment that is already before the Court, and pursuant to the HTA Plan.

Your Honor, that was a lot to talk about, what we've done, but these were not easy. They were not quick resolutions. They were not easy negotiations. And I would say that the mediation team and the Oversight Board put a lot of time and effort into reaching these, and these were the result of robust, good faith negotiations.

As Mr. Zelin testified, Your Honor, and this is included in his declaration at paragraph 20, "the negotiation

sessions in which I participated between the Oversight Board and the 2020 PSA creditors included representatives of the various stakeholder parties, as well as the parties' respective legal and financial advisors. During the many mediation sessions that occurred between August 2020 and February '21, I observed robust discussion among all in attendance concerning the disputed issues, the parties' respective legal and economic positions, and potential means to achieve a consensual debt restructuring."

He provided further testimony, Your Honor. These are included in his declaration, at paragraphs that are referenced. Likewise, Your Honor, Ms. Jaresko and Mr. Steel -- Mr. Skeel, excuse me, also testified regarding the extensive negotiations that lead to each of the Plan Support Agreements, and these are referenced in their respective declarations and the paragraphs that are set forth there, Your Honor.

Despite Mr. Hein's comment, Your Honor, retail investors were not excluded from the mediation process, nor were they inadequately represented. In fact, Your Honor, there was a question put to Mr. Zelin by Mr. Hein. He said "did any individual retail investors participate in the negotiation of the Plan that you participated in?"

Mr. Zelin, "I know there were discussions with -- I know, for example, you, Mr. Hein. I had some discussions with

the mediator during the course of the last, you know, two years. I don't know how frequent, how often. So there were -- the doors were open for discussions with all creditors, including retail creditors. So as a general matter, the Board did not turn away discussions with any party who wanted to have a discussion."

But, Your Honor, what were the terms of these settlements, and were they fair and reasonable? As set forth on the next series of slides, Your Honor, we tried to set forth what are in the respective Plan Support Agreements, and of course which found their way into the Title III Plan of Adjustment.

At Debtors' Exhibit 16, Your Honor, and we have here the GO-PBA Plan Support Agreement; at Exhibit 22, Your Honor, we have the PRIFA BANs stipulation, and the consideration being given there; at Exhibit 19, Your Honor, the ERS stipulation and the respective distributions that are going to be made as part of that stipulation; at Exhibit 17, Your Honor, this is the HTA-CCDA Plan Support Agreement terms; and of course, Your Honor, you will note that there is a portion of this that will be done pursuant to the Title -- the CCDA Title VI Qualifying Modification, which will be heard later on today.

And if you didn't note, Your Honor, as we've been going along, you can see my building being built off to the

side. I think I'm already up to the fourth level. And as I get to the next one, we have the PRIFA Plan Support Agreement, and this is Exhibit 18, Your Honor, and the respective terms there. And, again, you'll note that some of this will be satisfied or be done in the context of the PRIFA Plan Qualifying Modification to be heard later today.

Your Honor, then we get to the DRA Stipulation, and this is Debtors' Exhibit 146. And here you have the consideration that DRA will be receiving as part of its allowed claims under the Title III Plan of Adjustment, as well as a fee that it will receive in the context of the HTA Plan of Adjustment.

Lastly, Your Honor, this is the AFSCME Plan Support Agreement terms. This is Debtors' Exhibit 21. And as you can see, our lighthouse is now complete, and the light is shining for what we hope to be the Commonwealth of Puerto Rico.

Your Honor, we would like to say that the settlements are fair and reasonable, and we believe this is easy to say, because the standard, which says that a settlement should generally be approved unless it falls below the lowest point in the range of reasonableness, is not even closely to be touched. And, in fact, Your Honor, each of the settlements is way above the lowest point in the range of reasonableness, taking into account, among other things, the complexity of the litigation, the time and expense associated with it, the risk

of catastrophic outcome if decided adversely to the debtors.

Mr. Zelin, he testified to this in paragraph 23 of his declaration, Your Honor, and we have some additional declaration points that we would point out. But I would also like to say, Your Honor, that Ms. Jaresko, in her declaration, she testified -- excuse me. Here it is -- "moreover, and I understand that an adverse result in the lien challenge actions would have set a precedent for approximately 11.5 billion in remaining GO Bonds, PBA Bonds, and other bonds guaranteed by the Commonwealth." That is referenced, Your Honor, I believe in paragraph 206 of her declaration.

She further testified, Your Honor, that -- in paragraph 215 of her declaration, that these plan settlement agreements resolve billions of dollars of claims against the Commonwealth, PBA, and ERS; avoid time-consuming litigation; and provide a reasonable solution to extraordinarily complex disputes that are in the best interest of the Commonwealth and its stakeholders.

Your Honor, I'm going to jump ahead, Your Honor, because I know that we have a limited time here, and I would like to go all the way to what I think is going to be an important issue, which is the --

And if we could turn very quickly to the solicitation process, slide 76.

Thank you, Your Honor. Your Honor, as you know,

pursuant to the solicitation procedures, Prime Clerk was retained to carry out the respective procedures. And there's been some allegations here by Mr. Hein that this was not in fact done according to the terms of the procedures themselves, but, Your Honor, I would like to note that we have Affidavits of Service, which are in the record. These are the various publications, solicitation, and mailings that were done. And as you can see by this Affidavit of Publication, Your Honor, there were publications done in the Times, Bond Buyer, they were done on radio, and they were done in various Caribbean periodicals.

Your Honor, the question that has arisen, most notably by Mr. Hein, has been with respect to whether or not retail investors had an opportunity to participate, whether or not it was done pursuant to -- pursuant to the tender and exchange, whether or not it was in fact an inappropriate solicitation.

As we have stated, Your Honor, the tender and exchange process was done for purposes of determining who to tender the ballots to, and with this flow chart, Your Honor, we would like to show you the process that was undertaken. So the first question, Your Honor, on the left is, did you tender and exchange your bonds to join. If yes, you received a new CUSIP. If no, you kept your existing CUSIP.

If yes, Your Honor, you then went into what was

referred to as the larger plan -- excuse me, bond classes, and you did not have the option to certify as a retail investor. If you did, however, not tender, you did have the option to certify as a retail investor. And, Your Honor, most importantly, and the question that we addressed in opening statements, and I even addressed at the Disclosure Statement, is you had the opportunity to vote on the Plan in either situation.

So looking at that again, if you were then in the larger bond class, you had the opportunity to accept or reject the Plan. If you accepted the Plan, you received the PSA restriction fee. If you did not, if you rejected it, you were not entitled to the PSA restriction fee.

If you never tendered an exchange, and you had the right to certify as a retail investor, again, you had the right to vote on the Plan. You could accept the Plan, and certify as a retail investor; you could reject the Plan, and certify as a retail investor; or you could accept the Plan, but fail to certify; or you could reject, but fail to certify. And in that particular instance, Your Honor, if you failed to certify, you would not be included in the retail class, because we would have no basis to know that you were a retail investor, and, instead, you would be in the larger bond classes.

Your Honor, we would submit that everything that was

done was done in accordance with the terms and provisions of the Solicitation Procedures Order, and not in any way violated the terms of --

Your Honor, I don't know what --

COURT REPORTER: I'm sorry, Your Honor. This is the court reporter. Mr. Rosen's last few words were cut off.

THE COURT: So, Mr. Rosen, can you go back a couple sentences, please?

MR. ROSEN: I'll try, Your Honor.

In the event that someone did not certify whether or not they were a retail investor, we would have no way of knowing that they were a retail investor; and, therefore, they would have been included in the larger bond classes associated with the respective vintages.

Your Honor, I would like to at this point just jump to a final point to make, and I would leave the demonstrative for the Court's benefit with all of the references that we have to the law and to the facts that have already been included. I want to go, Your Honor, to the issue which is what we offered to the Court and to Mr. Hein at the end of my presentation I believe it was on Wednesday, and I'm getting there. Here it is, Your Honor.

Your Honor, and this is -- it's slide 108, Your Honor.

THE COURT: Thank you.

MR. ROSEN: What we've tried to do, Your Honor, was to give retail investors another opportunity to do what they didn't do the first time around. So again, Your Honor, if you look to the left: Did you tender an exchange? And this runs through, again, the yes and the nos, and it took us to the green slides, however, Your Honor. And it got to the whole discussion of whether or not we could tell whether or not you were a retail investor or not a retail investor.

But if you totally abstained from voting, which is the people that I think we need to focus on, because if they did vote, we know that in fact they were either a retail or they chose not to certify, but if they chose not to, and these are the people we've said along, Your Honor, we want to provide them with the opportunity to get that additional fee, we want to give them that second opportunity to certify as a retail investor.

So if, in fact, they do certify, they will be in the retail class, the appropriate retail class, and they would receive that retail support fee. And if they abstain from recertification, they will not be in the retail class, and they will not be entitled to the retail support fee, Your Honor.

So this is the provision that we said we would include, Your Honor, in the proposed Confirmation Order, and, in fact, we did yesterday. I believe it's included at

paragraph 88 or 87 of the proposed Confirmation Order. I do not have it in front of me. But we set forth in there, Your Honor, the mechanism to try to provide these would be retail investors that opportunity.

I would note, Your Honor, that there may not be many retail investors out there, like Mr. Hein or like Mr. Samodovitz believes, because a lot of these people had traded out of their bond holdings way, way earlier; a lot of these people may already be included in the larger class, and they did not certify. So there might actually be a very, very small group of people who would be included in the retail investor class that we don't know of at this particular point in time.

Your Honor, I know that I'm at my 30 minutes at this point in time, so with that, Your Honor, unless the Court has any questions, I would leave part one of the demonstrative to the Court for the Court's review. And otherwise, Your Honor, with no questions, I will turn the podium over to Mr. Mervis to handle part two.

THE COURT: Thank you, Mr. Rosen.

MR. ROSEN: Thank you, Your Honor.

MR. MERVIS: Good morning, Your Honor. Michael Mervis of Proskauer Rose for the Oversight Board.

THE COURT: Good morning.

MR. MERVIS: Your Honor, in part because I think

Mr. Rosen took my clicker, I'm going to ask -- that's okay. I'm going to ask Mr. Helt, our crack technician, to advance the slides for me, so I don't have to grapple with the technological challenge of pushing a button.

So, Mr. Helt, if you could turn to slide 110, please.

So, Your Honor, I'm going to talk briefly about the best interest test, and why we think we've satisfied it here. And of course a logical place to start is with the language of the statute, which is PROMESA 314(b)(6). The Court is well familiar with it, but I wanted to focus on two particular words at the outset, which is the words "to consider".

This is an unusual formulation. It's different than the Chapter 11 test. It's different than the Chapter 9 test. And we submit that what those words mean is that unlike in the Chapter 11 test, where there is clearly a floor and a numerical comparison that has to be done, that is not the case with 314(b)(6). And I'll explain that in a little bit as to why that matters.

So Mr. Hein has raised an issue, and the issue is whether, under 314(b)(6), the best interest test should be viewed in accordance with the collective recovery of creditors, as opposed to the individual recovery of classes of creditors, or on a creditor type by creditor type basis. So -- and, Your Honor, I'm going to focus on Mr. Hein's objections here, because although there are some other

objections, they're all premised on the idea that 314(b)(6) requires a class-by-class or claimant-by-claimant analysis, and it doesn't.

So let's start with Chapter 9. We're all familiar with this. Chapter 9 is a collective test. And it's important, I think, Your Honor, in thinking about the best interest of creditors in this case, that the class that Mr. Hein is focused on, the GO class, overwhelmingly accepted the provisions of this Plan of Adjustment. It wasn't even close. Every single class, including Mr. Hein's, accepted.

Your Honor, I think it's useful to compare the language of Chapters 9, 11, and 314(b) to explain why unequivocally 314(b) is a collective test. And the key words -- and I'm focusing, Your Honor, now on the right-hand column. The key words are, shall require the Court to consider whether available remedies under nonbankruptcy law and the Constitution of the territory would result in, and here's the key words, a greater recovery for the creditors.

Now, what does that not say? It doesn't say a greater -- it doesn't say greater recoveries for the creditors. It doesn't say a greater recovery for each class or each type of creditors. It uses the pleural, creditors, just as, as you can see, Your Honor, on the left-hand side of the column, Chapter 9 uses the pleural, creditors.

So what is Mr. Hein focused on? He focuses on the

words "available remedies under nonbankruptcy law," and he suggests that that is an implicit recognition that the remedies are different, and that, therefore, implicitly there's a class-by-class test. I submit, Your Honor, there's nothing in those words that conveys that message, and I submit further that Congress knows how to write a best interest test statute that deals with class-by-class or claimholder-by-claimholder recoveries, and that's the Chapter 11 statute. And 314(b) isn't even remotely like that.

I would say this. Mr. Hein in his sur-reply brief at page seven, that's docket 10 -- 19093 posits this hypothetical where GO creditors could recover zero under a plan, and yet the plan could meet the best interest test. Well, theoretically that's true, but what Mr. Hein ignores is that if he's right about GO priority, then every single GO class would reject the Plan. And they would have a multitude of defenses to defeat the Plan.

So the fact that in theory -- and I'm not even sure, frankly, the math works, because we're talking about 18.8 billion dollars in GO and pari passu debt, but even if the math worked, it doesn't make a difference. The hypothetical Mr. Hein talks about will never come to pass.

Your Honor, briefly, there are a number of assumptions in Mr. Shah's best interest test, and you heard from Mr. Shah, and you heard the cross-examination of him.

And that's not surprising, because this was a very complicated restructuring, and no one really knows better than Your Honor that there were a lot of litigation possibilities here. There were actual litigations, there were litigations that could have been asserted but hadn't yet been asserted, and a multitude of potential outcomes.

And so it made essential, it made perfect sense to try to capture all those variables in the assumptions that -- the legal assumptions that Mr. Shah and his team was given. And Mr. Hein in his cross of Mr. Shah implied that Mr. Shah sort of overrelied on the Commonwealth's -- or the Board's counsels' assumptions, but what's missing from that criticism is the failure to challenge all but one of the assumptions. The only assumption that Mr. Hein clearly challenges is the payment priority, and I'll get to that in a moment. But if the assumptions aren't challenges, and if the assumptions are good, then there's nothing wrong with a witness relying on the assumptions.

The other thing I will say, Your Honor, is that each of these assumptions -- not each of them, but many of these assumptions had alternate assumptions, where alternate scenarios were run. And the results were relatively uniform across the spectrum.

Not to get lost in this discussion, Your Honor, what would the landscape look like outside of Title III, and the

first bullet point on this slide is Mr. Shah's declaration at paragraph 12. And I highlighted a sentence, absent a mechanism to restructure the debtors' outstanding debt and pension liabilities, the Commonwealth would face great uncertainty, financial and political instability, and be subject to significant litigation.

So what did -- and that, as Mr. Shah testified, was a McKinsey assumption. It wasn't given to him by lawyers.

What was done in the prior slide, Your Honor, you will have noticed a bulletpoint. What McKinsey did was lower, to some extent, the revenue forecasts in the fiscal plan, and, in some cases, increase the expense assumptions in the fiscal plan to apply in non-Title -- in the -- outside of the Title III world.

One could argue, and it may be just the nature of the prose, that this is an understatement. And I, frankly, prefer the quote from Collier that is at the bottom of the page, which says I think very clearly that, in a non-Title III world, or in that case, in a non-Article IX world, the result is chaos.

Your Honor, it's often said that Courts don't have to check their common sense at the door. Your Honor obviously will come to your own conclusions about what the non-Title III world would look like, but I don't believe that chaos is an understatement.

So what were the results on the aggregate basis? And this, again, is coming from Mr. Shah's declaration at paragraph 13, where he describes what the results are, and then at paragraph 35, he's providing a comparison between aggregate plan recoveries and the aggregate recoveries in his BIT reports. And as you can see, for the Commonwealth, numerically, the recovery is much better, on an aggregate basis, and the same for PBA.

I want to spend just a minute on the ERS point, because you'll see there's sort of an eye popping number on the right-hand side, right-hand column of five to a hundred percent. And a hundred percent obviously is a hundred percent, but it's important for the Court to understand the basis of that particular scenario.

That particular scenario assumed that ERS bondholders would prevail in an argument that they had liens in PayGo payments, and although Your Honor never, I think, squarely addressed that issue, the First Circuit in its 2020 ERS decision, was very clear. And I'll just quote the relevant language. What -- and this is at 948 F.3d 457, at 680 -- sorry, 468 to 469. Importantly, the bond resolutions explicitly state that the legislation of the Commonwealth might reduce or, by implication, eliminate employers' contributions, and so adversely affect the bondholders.

That's a pretty big clue of how this would have come

out had it been litigated up to the First Circuit, but suffice it to say that the 100 percent recovery is something the Oversight Board and I think, objectively, is very, very unlikely. I submit, Your Honor, that we could stop right at this slide, because this is the aggregate recovery, but let's just take a look at the recovery by classes.

So, Your Honor, this comes again from Mr. Shah's declaration, and in particular his best interest test, which is Exhibit 130. This is Exhibit Eight. So what we see here are three different scenarios. On the left, you have a scenario where all GO debt after 2012 is deemed invalid. In the center, it's all GO debt after March 2021 (sic). And on the right, it's everything is valid.

So let's, for a moment, look at the GO bonds in the left and the center. So you'll see very high percentage recoveries there, but there's two important things to remember. One, these scenarios assume that a substantial portion of the GO bonds are held invalid, and so those bondholders receive nothing; but, two, the percentages are skewed, because the denominator is not apples to oranges with the plan denominator. The denominator only includes the GO debt amounts that are deemed valid.

And you can see the difference. If you look on the right-hand side, the numbers are much larger, 10.1 billion to 11.3 billion. Now, if you go to the right-hand side under the

GO Bonds, you'll see the recovery range of 75 percent, 84 percent, is, as a range, higher than the Plan recoveries. The Plan recoveries, and this is in the Disclosure Statement, Your Honor, which is docket 17628, at word processing pages 19 to 22, the range, depending on vintages, is 67.8 percent to 77.6 percent. But, an important thing about that, that does not include CVI recoveries. In other words, it doesn't include the potential upside.

And I submit, Your Honor, that given the level of uncertainty around this entire exercise, and the words in the statute, to consider, these numerical differences are not material. And that, again, even assumes that the proper test is to look at the GO bonds individually, which as I've already said, is not the proper test.

Your Honor, just a few more points, and then I'll wrap up. And this really goes to Mr. Hein's argument that GO debt should be paid first, even before operating expenses. So two reasons why that's not so. First, there is an assumption, I don't believe challenged by Mr. Hein, that even outside of Title III, the Board would still exist, and Titles I and II would continue, and the Board would continue to certify fiscal plans and budgets.

But even putting that aside, there is the police power, and on this slide, we have indicated where in the Constitution there are references to the police power, and a

Supreme Court case acknowledging that the Constitution does indeed include the police power.

Now, the first of the articles, article -- section 18 of Article II talks about an emergency, and Mr. Hein will no doubt tell you that there is no longer an emergency, because there is all this cash on hand. But that's wrong. The reason that there's cash on hand is because debt service hasn't been paid in four years, and although it is correct that GOs would, as an initial matter, because they are first in the waterfall under Mr. Shah's BIT analysis behind operating expenses, they will get more money up front, because that money is there, but not necessarily in the long run. And it's the long run that matters, because GO debt cannot be accelerated, which leads me, Your Honor, to my final point, which is what does the world look like with the police power.

So if GO creditors were to argue, hey, I want any surplus paid to me, and if the Secretary of the Treasury said, no, thank you, that's not what we're going to do, someone would have to go to Commonwealth Court, presumably it would be Commonwealth Court. And a Commonwealth Court judge would have to be asked whether GO bondholders, and Mr. Hein in particular, living in New York City, should be paid before firemen, teachers, policemen, and other critical public servants. They'd also -- that same judge would be asked whether social safety net spending should be eliminated.

Now, Mr. Hein says, but, in the fiscal plan budget, there's all this nonessential spending. And he talks about consulting fees and advertising fees and fees for the arts. Well, even if you assume that that type of spending wouldn't be found to be within the police power by a Commonwealth Court, it's important to recognize that the Commonwealth is not some sort of static financial statement. It's a living, breathing organism. It's a living, breathing society with human beings who react in the way that human beings react.

So if you cut advertising spending, for example, and if that advertising spending is for tourism, what's going to happen to the level of tourism on the island? If you cut the arts, or recreation, how attractive will that make Puerto Rico as a place to live? The Fiscal Plan is replete with a discussion of outmigration, and the risk of outmigration, and the point is that you cannot assume that a cut in spending won't have a relative impact on spending on the island and revenues. And Mr. Hein does not discuss that.

It is, in fact, discussed in Dr. Simon Johnson's report, Your Honor, at -- and this is docket 9060, in section five. And he notes that, in the Board's Fiscal Plan, the Board has a fiscal multiplier of 1.34, which basically means that for every dollar of spending that's cut, 1.34 dollars less money will be spent in the Commonwealth. And Dr. Simon (sic) suggests that perhaps that's a conservative number. But

it doesn't work the way Mr. Hein says.

And I'll close on this, Your Honor. Perhaps most importantly, Mr. Hein criticizes and makes arguments, but he did not offer any counteranalysis. He has no best interest test analysis, and on that basis alone, Your Honor can overrule his objections.

Now let me cede the podium to my partner, Mr. Bienenstock.

THE COURT: Thank you, Mr. Mervis.

MR. BIENENSTOCK: Good morning again, Your Honor. By our stopwatch, I think I have another 14 minutes. Does that conform to Your Honor's clock?

THE COURT: Sixteen.

MR. BIENENSTOCK: Okay.

THE COURT: I think we added a little back.

MR. BIENENSTOCK: Thank you, Your Honor. Much appreciated.

Okay. This starts at slide 119. I'm going to cover cramdown first. So these are the rejecting classes. Interestingly, Your Honor, very, very few of the confirmation objections go particularly to cramdown issues. Almost all of the objections of claimholders in these classes go to -- they don't like the treatment of their claim, whether the class had accepted or not, because of eminent domain reasons or, in the case of pensions, because they didn't think they should have

any cut. And, of course, after they voted, the monthly benefit modification was eliminated, so the only cuts now were to the classes that -- where the defined benefit plans had not already been eliminated, and are being frozen along with the COLAs.

The standard for confirming a plan over the rejection of a class is that the plan not discriminate unfairly, and it's fair and equitable. And fair and equitable means that if there's a junior class, that class will get nothing unless the rejecting class is paid in full.

Your Honor, we have a junior class in our plan, and that is the Class 64, which is subordination, because the claims are for the purchase or sale of securities, and that class gets nothing. So we have satisfied the -- we have satisfied the requirement for cramdown on fair and equitable.

As far as unfair discrimination, as I mentioned earlier, no one has compared their treatment to another class' treatment. Rather, they've made the objections I've mentioned, that they don't want to have any cut, et cetera.

Now, in the case of all of the pension classes, those classes are favored humongously compared to any other class. They get their full defined benefit earned as of the effective date of the Plan. The only hits to those classes are in the case of the teachers, they can't -- future work, if they choose to work in the future, will not increase their

benefits. And for the judges, they lose the cost-of-living adjustments in the future.

I want to focus now on the TRS, the teachers' class, for two reasons. One is last week, Your Honor, the Court was told a lot of things that we submit do not track to the facts. The Court was told, for instance, that there are rejection damage claims with no class to deal with them, and they're being paid from their own money. The second reason I'm dealing with this, Your Honor, is that if the Court were to side with those arguments, which in a minute I'm going to try to show are completely wrong and based on bad facts, but if the Court were to side with those arguments, the TRS class presents a real feasibility issue, because it creates a liability of so many billions of dollars, and the Oversight Board would not be able to say the Plan is feasible if it cannot have the freeze of those pensions.

Now, this slide that's up now, slide 123, shows that the TRS participant claim is defined to include both the retiree benefits as of May 3, 2017, and any right to accrue additional retiree benefits in TRS from and after the effective date of the Plan. Right there you have the rejection damages. They're losing the right to accrue additional benefits from and after the effective date of the Plan. So that has been put into the TRS class, which is 51C.

And the slide up now, 124, shows the treatment of

that class, and contrary to what the Court heard about they're getting nothing for those claims, and they're being paid from their own money, actually, they're getting paid three different things. They're getting paid through PayGo for their defined benefits up through the effective date of the Plan; they're getting back their defined contributions; and they're getting Social Security matching payments from the Commonwealth.

So they are being paid not from their own money, from Commonwealth money, and they're being paid for all of their damage claims. And we hope that puts to rest the factual inaccuracies that were stated last week.

Various pensioners, as I mentioned, have asserted that the Plan unfairly discriminates against them. Two examples are ECF no. 18485 and 18505. Each of those, they're one-page objections, but we take them seriously. They are from real people who are arguing that they should not have a cut. And hopefully those people feel -- they may not feel good, but hopefully they feel better today than when they -- at the time they voted, because the monthly benefit modification was eliminated from the Plan.

The dairy producers' claims are really not an impediment to confirmation. They're in a class now where they get 50 cents, which is better than the average general unsecured claimholder gets of -- we estimate from 20 to 40

cents. And if they're right about eminent domain, we don't think Suiza Dairy is right, but if they are right and Your Honor rules its nondischargeable, then they'd have to be paid in full as a nondischargeable claim.

We're not going to repeat the arguments Your Honor heard last week. I just marshaled the authorities we mentioned, the *Stockton case,* and the *Poinsett Lumber* case. Also, there was the *Luehrmann* case in the Eighth Circuit, on which *Poinsett Lumber* is based.

We did want to bring to the Court's attention one other argument we did not mention last week based on the Supreme Court decision in *Block v. North Dakota*, on this slide 128 -- or 126 -- or 128, Your Honor. What that case says is that the Supreme Court held that Congress does have the power to eliminate eminent domain claims through the statute of limitations, and while the Court might believe -- it's obvious that, you know, there has to be a statute of limitations.

The fact is that there are cases on the books, the *Soriano* case and other cases in the Supreme Court, where it has worked to eliminate eminent domain claims. And the argument is, that if Congress has the power to eliminate in total eminent domain claims even outside of bankruptcy, then it surely has the power, given that it was granted the bankruptcy power in Article I, Section 8, Clause 4 of the Constitution, to limit payment of eminent domain claims.

Your Honor, my partner went through the best interest test, but we think this further supports, Mr. Shah's findings further supports that the treatment of all of the rejecting classes is not unfair discrimination. On the whole, they're getting in the range, sometimes better, sometimes maybe a bit worse, but they're getting in the same range at least as they would get outside of Title III.

On the subject of preemption, Your Honor, to our knowledge, this is not really being challenged, except for Acts 80 through 82, which I'm anxious to get to; but as a matter of necessity, we've asked, as part of the Plan, for the Court to rule these statutes are preempted, because they do things like authorize debt. And our evidence shows that, you know, some of these statutes would cost, as Mr. Malhotra is saying here in his declaration, 1.7 billion dollars paying of old debt that's being discharged under the Plan.

The statutes do things like authorize full payment of General Obligation Bonds. They authorize and require appropriations. Your Honor is well familiar with that from the litigation. Clearly, there's no point in appropriating money to HTA or PRIFA to pay debt that's being discharged, and on, and on. Largely, we believe the statutes that we've listed as being preempted are noncontroversial as far as we know in the context of this confirmation.

Now, the TRS and JRS statutes that are the defined

benefit plans that we are freezing, here in Mr. Malhotra's declaration, and slide 139, he shows that just for fiscal year 2022, this would cost 984 million dollars if we don't do it. So it's a significant hit, and threatens feasibility of the Plan.

I mentioned statutes relating to the issuance of new securities. For securities under the Plan, Act 53 has largely made this academic, but to the extent there's other debt under the Plan that someone says is a security, we submit that in a federal bankruptcy situation, you don't need local authorization to issue debt.

Your Honor, I'm going to jump to 80 to 82 now. This is critical. Last summer -- two summers ago, Your Honor, at this point, the legislature passed Acts 80 to 82, which effectively create defined benefits in excess of their level going into the Title III case, and they did it under the concept that they'll work some early retirements, which will create savings to offset the increased defined benefits they were offering, but the -- in the Oversight Board's view, two things were wrong with that.

First of all, they are now saying that they will determine the treatment of pension claims that preceded the Title III petition; and, second, that they will do it in a way that, in our view, does not save money, because the positions that would be retired can be replaced. And they decide what's

essential service that can be replaced, and you can replace any position appointed by the Governor, et cetera, et cetera.

So the Oversight Board views those three acts together as creating up to five billion dollars of debt not accounted for by the Plan and its finances. Now, the reason Your Honor has not heard about this earlier is that the Governor -- it was passed under a different governor, but that governor and the current governor agreed not to implement any of these statutes while it worked with the Oversight Board to see if we could come up with something to create some early retirement trade offs that would be at least revenue neutral and the like.

Suddenly, after this Confirmation Hearing started, the legislature on November 11 passed S.J.R. 171, compelling the Governor immediately to implement Acts 80 through 82. Now, the objection that AAFAF filed the other night admits time and again that these acts increase the defined benefits over what they were, that is an increase over what the Plan would otherwise pay.

So, Your Honor, we think it just jumps off the page that the local legislature cannot decide during a Confirmation Hearing that it's nice that for four and a half years the Board worked on getting rid of defined benefits going forward, because that was a large part of the problem; worked on what retirees would be paid; and say to the Oversight Board and

everyone else, well, thank you very much for your four and a half years of work, but here's how we're going to treat retirees, and we're going to increase benefits up to five billion dollars, if the --

(Sound played.)

MR. BIENENSTOCK: -- Oversight Board's calculations are approximately correct.

So in these slides, Your Honor, we highlight the sections of the statutes, the increased benefits; we highlight AAFAF's admissions in the objection it filed that it did increase benefits in three areas; and while it says that we should have acted earlier, they passed S.J.R. 171 on November 11, Your Honor. And we promptly told the Court, and that's what AAFAF was reacting to, that we would have to put these statutes on the list of preempted statutes, because, quite possibly, the Plan wouldn't be feasible if these statutes were ever enforced.

And my final point, Your Honor, is this. AAFAF argues in its objection -- which we will respond to today in writing, but in large part the Court is hearing it now -- it says, well, even if we're right, we have to go through a section 204(a) process, or a 108(a)(2) process. No. AAFAF has it all wrong. We could do what it's suggesting, but if a statute is preempted, it's preempted. We don't have to use 204(a) or 108(a)(2).

These statutes where the legislature and Governor would be telling the Board we will decide what retirees get, largely for prior services, and a little for future services that the employees would have to provide, that is directly contrary to the Board's exclusive right to propose a plan that determines treatment of prepetition claims. It jumps off the page. And we don't think we can confirm without a determination to that effect, because we might not have the money to do it. We'd be putting the Commonwealth back in the position that we attempted to rescue it from.

Your Honor, I'm going to stop now, and I think that concludes our opening, unless the Court has questions.

THE COURT: I have no questions at this time. Thank you, Mr. Bienenstock.

MR. BIENENSTOCK: Thank you, Your Honor.

THE COURT: It is now 10:15 New York time, 11:15 Atlantic Standard Time, and so we will take our ten-minute morning break now, resuming at 10:25, or 11:25, depending on where you are. Mr. Kirpalani will be the next speaker. Thank you.

(At 11:09 AM, recess taken.)

(At 11:20 AM, proceedings reconvened.)

THE COURT: Good morning. We're back again continuing with the closings argument on the matter of the Confirmation Motion. The next speaker is Mr. Kirpalani, for

the LCDC.

You've been allotted 20 minutes, Mr. Kirpalani.

MR. KIRPALANI: Thank you, Your Honor. Good morning. Susheel Kirpalani of Quinn, Emanuel, Urquhart & Sullivan, on behalf of the Lawful Constitutional Debt Coalition.

Your Honor, I'm going to address three subjects in support of confirmation, with particular focus on the treatment of constitutional debt in the Plan.

Judge, can I share my screen?

THE COURT: Yes, you may.

MR. KIRPALANI: Just one second.

THE COURT: You should be able to do it. We have you set up for it.

MR. KIRPALANI: Do you see my slide there?

THE COURT: Not yet. Did you press the "share screen" at the bottom?

MR. KIRPALANI: Yes. Let me try it again. There we go. No. Two seconds. Okay. Now you should be able to see it.

THE COURT: Yes.

MR. KIRPALANI: Okay. Thank you so much. Sorry about that. Our demonstratives were filed a little while ago. Just for the record, it's at docket 19332.

Judge, I'm going to cover three subjects. Topic one is the evidence supporting good faith, arms-length

negotiations underlying the settlements that are embodied in the Plan. Topic two is going to be the reasonableness of the PSA fees. And topic three would be the best interest of creditors where we diverge a little bit with the Oversight Board as to how that test should be conducted. And we think, as an alternative to the Court, if the Court were to accept the arguments that the Contract Clause must be evaluated, and that best interests must be looked at from the perspective of each constitutional debtholder, we submit that the evidence will show -- does show that the best interest test is met anyway.

Before we review the evidence, though, Judge, Your Honor had a colloquy with Mr. Rosen at the end of the last hearing on Wednesday, November 17th. The transcript was at page 132, line 23.

The Court's question was "what's the source of law that supports paragraph four of the Confirmation Order? Namely, what is the legal justification for binding a dissenting creditor within an accepting class to the terms of the Plan?"

I think the Court was just looking for the tie back to the Bankruptcy Code of what is a central feature of any plan, binding holdouts. We touched on this in our statement of position with respect to the United States Attorney General's request for enlargement of time on why a dissenting

retail bondholder objector's constitutional challenges are resolved by the class' vote. Our filing last week was at docket no. 19300, and the relevant sections of that filing, at paragraphs seven and eight.

For completeness of the closing argument record, the source of law is not a section within Chapter 11, but rather section 944(a)(3) of the Bankruptcy Code, which is incorporated through section 301(a) of PROMESA. So not a lot of cases interpreting, a straight forward statute, but Your Honor could find discussion of it in the seminal Chapter 9 case of *In re County of Orange*, 219 B.R. 543, 558. That's a bankruptcy decision from the Central District of California in 1947. And there the Judge, citing the Collier's Bankruptcy Treatise, the Court held, "the important principle of Chapter 9 embodied in section 944(a), is that once a plan has been accepted by the requisite majority, all creditors are bound by the Plan."

Another seminal case which predates the Bankruptcy Code and makes the same point is *Getz v. Edinburg Consolidated Independent School District*, 101 F.2d 734, 736 (5th Cir. 1939). The analog in Chapter 11, is section 1141(a). Both statutes answer the same question of what is the effect of confirming a plan on those who may have voted against the plan, or not voted at all.

To be clear, the proponents of the Plan are not

invoking section 1129(b), which is the cramdown statute, to deal with dissenting minorities within a class. Cramdown will be necessary only to impose the treatment on the classes that rejected the plan, like the General Unsecured creditors for example, but not for any of the constitutional debt classes, because they all overwhelmingly voted in favor. The issue of the majority binding the minority on all aspects of the Plan was addressed by the Oversight Board's brief in support of confirmation at paragraphs 165 and 297. That's at docket no. 18869.

So jumping to the evidence, Your Honor, with that framework in mind, it is still the plan proponent's burden to prove the elements of confirmation in order to make the Plan binding, and the vote is just part of it. I'd like to focus on the evidence supporting the good faith negotiations that lead to the terms of the Plan. That is section 1129(a)(3).

As we can see here, this is my slide three, Ms. Natalie Jaresko, the executive director of the Oversight Board testified by declaration. The relevant paragraphs are paragraphs 29, 201, and 202. She testified that she was directly or indirectly, through her advisors, engaged in extensive mediation sessions under the guidance and direction of the mediation team. And that she and other representatives of the Board participated in good faith, and all of the negotiations were at arm's length with the various creditors,

which of course includes the LCDC.

Professor Skeel also testified in his declaration, in paragraphs 17 and 33, that the Oversight Board engaged in extensive mediation through the mediation efforts overseen by Chief Judge Barbara J. Houser of the United States Bankruptcy Court for the Northern District of Texas, and continued to negotiate directly with various constituencies, all in an effort to build support for the restructuring of Commonwealth debt.

Professor Skeel participated himself, as he testified, and based on his participation in the negotiation leading to the PSAs, he testified, and it was uncontroverted, that the negotiations were conducted at arm's length and in good faith.

THE COURT: Mr. Kirpalani.

MR. KIRPALANI: Yes.

THE COURT: I see a red symbol up at the top of your screen --

MR. KIRPALANI: Yes.

THE COURT: -- with a white circle in the middle of it.

MR. KIRPALANI: Uh-huh.

THE COURT: Is that meaning you're recording?

MR. KIRPALANI: I don't believe so. I think it means I'm broadcasting, but let me touch it and take a look. It's

just the broadcasting. It means I'm sharing my screen.

THE COURT: Okay. Thank you very much. I just wanted to make sure.

MR. KIRPALANI: Of course, Your Honor.

So Mr. Zelin testified, in his declaration, at paragraphs 13 and 23, that he personally participated in the vast majority of the negotiations and discussions concerning the settlements, that the negotiations leading to the execution of the GO-PBA PSA were at arm's length, and in good faith, and lead to a compromise of contested positions between the parties to the GO-PBA PSA.

The next subject, Your Honor, is the reasonableness of the PSA fees. So, first of all, in terms of the legal standard, as a technical matter, section 1129(a)(4) is the statute that ordinarily requires the Court to approve the reasonableness of any payments made by the debtor for services or for costs and expenses incident to the case. That section of Chapter 11 was not incorporated into PROMESA. It is not in Chapter 9 either.

Presumably, under the theory that a sovereign ordinarily can use its property to pay fees for services or reimburse costs as it deems appropriate, but why is it relevant still? It's relevant to the Commonwealth's Title III case, because the allegation has been made by at least one retail bondholder that the payment of PSA fees, including the

consummation costs, is an unequal treatment of constitutional debt claims, and that would violate section 1123(a)(4) if it were true. Of course it isn't true. Let's see what the evidence actually says.

If we look at Ms. Jaresko's testimony in her declaration at paragraph 216, she says, specifically, in consideration for their efforts in assisting in the formulation of the Plan, and to compensate the PSA creditors for fees and expenses incurred in connection with the negotiation and execution of the GO-PBA PSA, the Oversight Board determined that it is fair and reasonable for the PSA creditors to be paid the consummation costs.

Additionally, in exchange for agreeing to support the Plan, and to lockup the parties' bonds in accordance with each of the GO-PBA PSA, and other PSAs, the Oversight Board determined it is fair and reasonable to make PSA restriction fees available to such consummation cost parties. That's the testimony, and it's uncontroverted.

Mr. Zelin, the lead banker who negotiated the Plan for the Board, also testified that the PSA fees were not on account of the claims. So it's not part of the treatment, but, rather, it's for legitimate and prudent purposes made in the business judgment of the debtor.

At paragraph 88, he testified that they were bargained for, they were part and parcel of the overall

compromise, and they were -- the fees were paid, in paragraph 88, he testified, as consideration for their efforts, meaning the creditors' efforts, in assisting in the formulation of the Plan, which has garnered significant creditor support, continuing to assist in the finalization of definitive agreements and ancillary documents, and the costs incurred in those and other efforts; that it was in that context the Oversight Board determined it was fair and reasonable for the recipients to be paid consummation costs.

I would note, Your Honor, even as recently as this weekend, the ongoing negotiations and discussions over the final forms of critical bond documents that are essential to implementing the Plan continues between the Board and the PSA creditors.

Even under cross-examination, Your Honor, Mr. Zelin testified that the willingness of the Board to provide the consummation costs and the fees was based upon a personal understanding that the creditors that they were negotiating with for years were incurring significant expense, and the Board's willingness to provide that reimbursement, that fee, was with that knowledge.

Just a second, Your Honor. I'm getting my timer back up.

So the testimony on cross-examination by Mr. Zelin was that the consummation costs related to reimbursing those

stakeholders who are active participants in the negotiation for the costs that they incurred, so that coming to negotiation, they could have the facts and information they require for that negotiation to be arm's length and fair.

And, finally, he testified that, based upon the dollars that the 1.5 percent -- that's the consummation costs component -- represents, and the estimates for two of what were at least five or six or seven groups that I saw, I believe our decision or our assumption that the 1.5 percent was reasonable was more than validated.

So, as I mentioned in our opening statement, Your Honor, the GO-PBA PSA in particular enabled the Board to keep its senior-most creditors locked in and locked up for over two years while it accumulated additional revenues and made additional judgments to deal, to cut deals with other groups of creditors. No one could credibly say that paying the PSA fees to restrict constitutional debtholders was -- did not work out well for the Board and provide a benefit to Puerto Rico.

The last topic I'd like to address, Your Honor, is the best interest of creditors. As the Court knows, we cut our deal with the Oversight Board in the second quarter of 2019. We stand by our deal as a fair compromise, but the Court still must make an independent finding that the best interest of creditors has been satisfied.

Some dissenting retail creditors have raised the Contracts Clause. They also raise the Takings Clause, but given we are dealing with GO debt, that is a disputed secured claim that was compromised and settled, I want to focus on the Contracts Clause, because it's indisputable that constitutional debtholders do have contracts with Puerto Rico.

The Oversight Board urges that the Contracts Clause is not at issue, because PROMESA is a federal law, and Congress is not bound by the Contracts Clause. The Board also says the best interest test should look to aggregate consideration to all creditors, and not to a GO bondholder's right to be paid in accordance with its constitutional priority.

Your Honor, we will take the other side of those arguments, because, in the alternative, this is a case of first impression, and we think Your Honor needs to consider "in the alternative" as well. We can demonstrate why the Plan is nevertheless confirmable. While we agree that PROMESA is a federal law, the Contracts Clause still plays a role in the analysis. We think it's incorporated into the analysis over best interests.

In the end, it is the Oversight Board, as an agent of the state -- we know from the Supreme Court's decision in the *Aurelius* case that the Board is not acting on behalf of the Federal Government. It is acting on behalf of Puerto Rico.

And it is the judgments and determinations of the Oversight Board that is resulting in a decision to impair the bond debt and by how much.

PROMESA would permit unimpairment as much as it permits impairment. So if the Oversight Board seeks to impair contracts of Puerto Rico, that decision is subject to the Contracts Clause in our view. Moreover, as at least one of the objectors pointed out, Law 53 is a state law that was passed to implement the Plan, and the passage of that statute, may be subject to the Contracts Clause, too. But while we agree with the retail objectors that the Contracts Clause is something that the Court needs to consider as part of best interests, the evidence shows the Contracts Clause is satisfied by this plan.

Let's look at it. The Contracts Clause, Your Honor, the text of it says -- I'm sorry. Before we go there, the text of section 314, the best interests test, says "the Court shall confirm a plan if, (6), the plan is feasible and in the best interest of creditors, which shall require the Court to consider whether available remedies under the nonbankruptcy laws and Constitution of the territory would result in a greater recovery for the creditors than is provided for by such plan."

And of course, Your Honor, we know that the U.S. Constitution says "no state shall pass any law impairing the

obligation of contracts," but we also know that that language, although it's written in the absolute, it has never been interpreted in the absolute. The Supreme Court has told us in the *U.S. Trust* case that, legislation adjusting the rights and responsibilities of contracting parties must be based upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption.

And we also know from a case that I would encourage Your Honor to reread, the *Faitoute Iron & Steel* case, because of its great similarity to the situation here, the Supreme Court there held that "impairment of an obligation means refusal to pay an honest debt. It does not mean contriving ways and means for paying it. The necessity compelled by unexpected financial conditions to modify an original arrangement for discharging a city's debt is implied in every obligation, and for the very reason that, thereby, the obligation is discharged, not impaired."

The evidence, Your Honor, supports that there is a necessity of impairment. We would cite paragraph 12 of the Shah Declaration, paragraph 13 of the Skeel Declaration, paragraph 57 of the Zelin Declaration.

And let's turn to the reasonableness of the impairment. Your Honor can look at what we have here on our slide 13, is a summary of the classification and votes by class. We thought it would be easier to understand if we just

looked at the different vintages. You can see that the overwhelming acceptance of constitutional debtholders, between 92 percent -- I'm sorry, between 80 percent and 100 percent of every single class of constitutional debtholders. That speaks to the reasonableness of the impairment.

And lastly, Your Honor, we need to understand and bring it full circle. Is the proposed adjustment of constitutional debtholders' rights reasonable and appropriate? And so what we've done here is, based on the evidence, it's all footnoted, we've created a bar graph as a demonstrative to show the amount of existing GO and GO Guaranteed claims is 13.5 billion --

(Sound played.)

MR. KIRPALANI: -- of GO claims, 4.67 billion of PBA claims, and 577 million of other. So the total is 18.757 billion of claims.

And let's look at the proposed treatment, the adjustment, to determine, for Contracts Clause purposes, is it reasonable and appropriate? And when you stack it up, we've got 6.6 billion of cash, 7.4 billion of new GO Bonds, and an original notional amount of three and a half billion of the GO contingent value instruments, for a total consideration package of 17.538 billion dollars.

And when Your Honor rereads the *Faitoute* decision, you'll see that even then where the New Jersey law that

governed it did not permit the reduction of any principal, the case really turned on whether the means for discharging the debt was reasonable and appropriate. And we think that this case is analogous to that, Your Honor.

With that, I sincerely want to thank the Court and your staff in both San Juan and New York for putting up with us for all of these years, and for inspiring us back in May of 2017 that failure was not an option. I also want to thank Judge Barbara Houser for her tireless dedication and service in this case. On behalf of the LCDC, we respectfully urge the Court to confirm the Commonwealth Plan of Adjustment, and pave the way for Puerto Rico to emerge from bankruptcy and focus on creating economic prosperity and greater opportunities for its citizens.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Kirpalani.

The next speaker is Mr. Friedman for AAFAF, who's been allotted 12 minutes.

MR. FRIEDMAN: Thank you, Your Honor. It's Peter Friedman from O'Melveny & Myers on behalf of AAFAF.

Your Honor, ultimately, AAFAF does support this plan, and I do intend to get to the reasons why we support it, in particular some legal arguments rebutting some of Mr. Hein's arguments. But it is important for us to address the issues with respect to Acts 80 through 82, as well as the other issue

you raised.

And one point I want to bring to the fore, Your Honor, is I believe SEIU had objected to paragraph 62 in the Confirmation Order. I note that that is now in the Plan as of the most recent version of the Plan filed late last night or early this morning, and I assume their objection applies to the provision that's now been imbedded into the Plan with respect to that.

THE COURT: That is the ten-year prohibition on restoration of defined benefits?

MR. FRIEDMAN: Yes, Your Honor.

So with respect to Acts 80 to 82, our objection is at this stage really procedural. AAFAF supports the Plan, but as you've seen, Your Honor, over the last ten days, that the terms of the Plan have changed, particularly as it regards to the government and the government's ability to exercise its policy making powers.

And the Board is doing a lot of this under the guise of 314, that purports -- or that says that a plan has to be consistent with a fiscal plan, but we read that as dealing with treatment of creditors, not just a bulldozer to run over any law that the government -- that the Board doesn't like. We think that there are -- obviously, at length, have been procedures over how the Board is to invalidate a law if it is appropriate. The Court has said on multiple occasions the

Board doesn't have a simple, self-effectuating power to say that a statute is invalid.

Now, in the context here, as Mr. Bienenstock acknowledged, Acts 80 through 82 were passed in the summer of -- August 2020. They've been on the books substantially. Our brief and objection outlines the back and forth between the government and the Board with respect to the implementation of these statutes that the government does believe and has certified are not significantly inconsistent with the Fiscal Plan, which is the relevant test under 204.

And there -- notably, Your Honor, one of the reasons that I think we have real issues with the last minute inclusion of the statutes, sort of in toto on this preemption list, is Acts 80 and 81 have severability provisions. And to simply say that in their entirety they're preempted without doing the work as to what each section means and whether it's permissible is procedurally improper.

I would note, similarly, just as Acts 80, 81, and 82 are being painted with a very broad brush, so is S.R. 171. S.R. 171 was actually passed by the Senate in August, so not a surprise that this is an issue of heightened importance to the government, and did not pop up at the last minute by any means. But as S.R. 171 does not require complete implementation with Act -- of Act 80. Rather, it deals only with specific employees who are nonessential employees, who

will not be replaced, and the government firmly believes that that will result in cost savings of the kind that we've been in discussion with the Board for months about. And I think we reference in our brief that the Board has acknowledged that the government is proceeding with certain phases of Act 80's conditional implementation, and that the Board has acknowledged that that might generate cost savings over and above what's required in the Certified Fiscal Plan.

So to simply put these statutes, with a very broad brush, on a list which deems them to be completely preempted, without giving us the opportunity to fully litigation, as is our right is, in our view, abuse of the preemption process. And a list that started in August, where we had the full opportunity to review all of these statutes, and where the Board was required to put in evidence as to a nexus between plan provisions and make legal arguments as to the nexus between the legal basis for preemption, or a factual basis for preemption, and how it interacted with the statute.

We're not arguing that the Board is without remedies in the future if it believes that these statutes are significantly inconsistent with the fiscal plan. We are arguing against this extremely broad use of preemption without notice. And without notice, Your Honor, one of the points I want to make is, remember, there are multiple suits in state court about these that have been stayed, but there are people

who argue they have rights under Act 80. Not prepetition rights, but acts -- rights which have arisen since August of 2020. And to simply wipe these away and say they're preempted on two business days' notice, Your Honor, in our view, does not comport with due process.

I want to move on, Your Honor, from that, which is our strongly held objection to inclusion of those statutes, to the reasons we do support the Plan. We believe the Plan reflects beneficial economics to the Commonwealth of Puerto Rico. We have, you know, sympathy to the unions, and the teachers, and the judges in their objection, but as the Governor said when he came to court, the government will abide by whatever the Court's decision is, because it is a government of the rule of law.

Now, I want to first talk about pension cuts, and the lack of pension cuts in the Plan, and why that's not an issue. Obviously the Eighth Amended Plan eliminates the monthly benefit modification. In our view, frankly, there never should have been a monthly benefit modification. It caused -- even the potential inclusion of it caused substantial distress to Puerto Ricans, as this Court heard when you permitted people to be heard two weeks ago. But the removal of the monthly benefit modification is appropriate factually and legally, and I think it comes against the backdrop of what the First Circuit noted in *COFINA*, which said, courts in municipal

bankruptcies have engaged in somewhat a freeform equitable balancing, explicitly allowing municipalities to consider all sorts of policy considerations in devising plans of adjustments. And what could be more appropriate among policy considerations than to respect the pensions of government retirees?

And I think that marries up with the backdrop of the Court's analysis of *Granada*, and with respect to classification over the summer, that there are good business justifications for, in the first instance, classifying pensioners separately from other creditors and, ultimately, their treatment.

I think we need to remember to not take a myopic focus, I think as Mr. Hein's arguments did, on pension cuts under the Plan versus the reality of pensions and reductions to pensions that Puerto Rico's retirees have suffered over the years. This is laid out in the Disclosure Statement, in the Johnson Declaration, in the Levy Declaration, all of which point out about how -- for example, in the Levy Declaration, Act 3 and Act 106 affected large reductions to pensions. She points out that the Oversight Board Section 211 report states that reductions for exemplar employees range from 44 percent to 82 percent. This is unrebutted evidence. And that's just Act 3, 213 -- and Act 106.

Other statutes, Act 160, Act 162, Act 116, all of

which are described in the Johnson Declaration and the Levy Declaration, worked reductions on the rights of people of Puerto Rico to their retirement benefits. The Levy Declaration makes clear at Exhibit Two that the monthly benefit modification would have negatively affected 139,000 people in Puerto Rico. There is good business justification for not doing that.

The Johnson report, which I assume Mr. Gordon will discuss in more detail, focuses on the vulnerability of those 139,000 people, and why it's so important to avoid damage to those people, why it's justified, and why it is -- and I think if you, for example, look at the *Stockton* decision, why this marries up well, and why it is legally permissible to not have undertaken any cuts to retirees.

Your Honor, the next thing I want to address briefly is best interest test. I actually think that -- and I couldn't tell quite if the Oversight Board was referring to this, but I believe the Court addressed the proper interpretation of best interest in the *COFINA* findings of fact and conclusions of law in paragraph 147 when it said "it's a collective test, not an individual test." And I think that's important to emphasize.

Mr. Hein makes certain arguments that I sort of understand them to be saying, well, Puerto Rico is not using all of its assets to retire its obligations, and, therefore,

the Plan can't be confirmed. That's wrong. The Court in the *Sanitary & Improvement District of Nebraska*, 98 B.R. 170, said "a debtor may obtain confirmation of a plan over objection, which does not utilize all of the assets of an estate to retire its obligations. The objecting party suggests that since the value of the property of the estate is equal to or exceeds the amount of bondholder claims, it is the duty of the debtor to levy sufficient taxes to pay the claims as they existed on the date of the petition, plus accruing interest. This Court concludes that such an assertion is erroneous."

Your Honor, Mr. Hein, in his best interest analysis, also talks extensively -- or not even analysis, his criticisms about tax abatements, but he didn't provide any evidence that tax abatements, or foregone revenue from tax abatements, is something that GO creditors would have a claim to, nor could the Board have even ordered the removal of tax abatements. In fact, PROMESA Section 208 strictly limits the Board's power to do anything with respect to the Commonwealth's execution of discretionary tax abatements for similar relief. So it would have been completely inappropriate to include anything related to tax abatements in a best interest test.

Your Honor, the other point I wanted to make is with respect to 314(b)(3), I think Mr. Hein is looking at the statute the wrong way. I think what that section provides is to confirm a plan, a debtor can't be prohibited by a law from

taking actions going forward. It's not about the retroactive nature of the treatment of claims. It's about what the debtor's doing going forward.

And here we think Act 53 respects Puerto Rico law going forward with respect to the pledge, you know, in Article 2, the pledge of good faith, credit and taxing power to the GO Bonds, which will be issued under the Plan. Article 302 provisions of the Confirmation Order all comply with Commonwealth law with respect to the issuance of GO Bonds, and provide them with protection. And there is no legal or evidentiary basis for the contrary.

Your Honor, we've said from the beginning that pension cuts -- we've said it loudly and repetitively, that there is -- pension cuts were wrong, and there were no cuts under this plan. We have been consistently for a strong voice for the government. We reiterate that today. We have spoke loudly to make sure that even though the Board was imposed on Puerto Rico, restructuring is not going to happen to Puerto Rico, but with Puerto Rico as an active participant.

Your Honor, we ask that you confirm the Plan. It is far from perfect. It reduces debt substantially. It allows for investment in the future. And, most importantly, it will definitively mark the beginning of the end of the Oversight Board's tenure in Puerto Rico. Thank you.

THE COURT: Thank you, Mr. Friedman.

The next speaker is Mr. Dunne, for Ambac. I have Mr. Dunne for four minutes.

Mr. Dunne, you need to unmute.

MR. DUNNE: Can you hear me, Your Honor?

THE COURT: Now I can hear you. Good morning.

MR. DUNNE: Thank you. Good morning, Your Honor.

Dennis Dunne from Milbank on behalf of Ambac Assurance Corporation. I'm joined in the courtroom by my partner, Atara Miller. Ms. Miller will address the Court this afternoon when we get to the qualifying modification motions.

Before the Court is the Oversight Board's motion to confirm the proposed Plan of Adjustment. Section 314(b) of PROMESA governs confirmation. I'd note that that statute reflects the polls between the various conflicting interests at issue in this truly historic case.

For instance, the Court's going to need to determine that, you know, the Plan is consistent with the incorporated provisions of the Bankruptcy Code, with the bespoke provisions of PROMESA, that it has the necessary legislative, regulatory, and creditor approval. It must be feasible. It must be in the best interest of creditors, and it must also be consistent with the Fiscal Plan. Each prong there raises a host of legal and factual issues.

Prior counsel this morning took the Court through the relevant legal inquiries, and cited to the supporting

evidence. I think they also addressed Your Honor's written questions. So I am going to not focus on that ground. I think it was well trod by prior counsel, but I do want to pause in my minutes today on a few kind of fundamental touchstones.

One, I think is a risk we all have to guard against, which is reflexively infusing our views and experience with Chapter 9 and Chapter 11 cases, and outcomes, into our interpretation of PROMESA. As the Court is deeply aware, PROMESA is unique legislation. Yes, it reflects and incorporates certain elements of the Bankruptcy Code, but at the end of the day, it stands on its own, and is the result of a separate set of pushes and pulls in Congress which birthed this particular insolvency law. I say that because confirmation should rest or fall solely on PROMESA's statutes, and not on whether parties contend the outcome should have or would have been different under the Bankruptcy Code.

One note about the supporting parties, of which Ambac is one, support does not mean the Plan provides optimal returns for us. A good settlement is one in which everyone is a little --

(Sound played.)

MR. DUNNE: -- or a lot unhappy, yet prepared to live with the outcome given the time, the cost, and the risks associated with the alternatives.

And throughout the six days of this Confirmation Hearing, the Court heard from numerous unhappy parties, and Ambac, too, is somewhat unhappy. We continue to believe that our legal rights would have entitled us to greater recoveries than provided for under the Plan, but I think the Court can take comfort from the fact that the stated unhappiness from the parties on competing sides of various issues, in addition to the overwhelming support for parties who had staked out, throughout the past four years, strongly held oppositional positions throughout these cases, is evidence and is probative of the overall fairness of the Plan of Adjustment.

Your Honor will recall that, during our opening, we noted the inherent uncertainty present in the Commonwealth's financial projections. I think we all know that future macroeconomic conditions, political will, legislative actions are impossible to predict, making both sides of the argument about the Commonwealth's future financial condition plausible.

The Commonwealth may have additional resources, they may have fewer, but a good example of the known unknowns, to borrow a Rumsfeldian phrase, is what happened last week with the conclusion by the GAO with respect to medicate allotments. This unexpected action could result in a substantial reduction in Puerto Rico's fiscal '22 Medicaid allotment.

The question here, Your Honor, is simply whether the Board has presented reasonable assumptions about the future

financial wherewithal of the Commonwealth. They need not, and indeed cannot, guarantee precision and complete accuracy.

In sum, we submit that confirmation of the Plan of Adjustment for the Commonwealth is legally warranted. As the Court knows, and as we have repeatedly said --

(Sound played.)

MR. DUNNE: -- our support for this plan is tied, Your Honor, to the PRIFA and CCDA Title VI modifications, but the global resolutions embodied in the Commonwealth Plan, the CCDA and PRIFA Title VI QMs, the HTA PSA, are a testament to the breadth of support and the comprehensive nature of the solutions embedded in this plan.

The POA isn't perfect, Your Honor, but it is good enough, it is lawful, and it should be approved. Thank you.

THE COURT: Thank you, Mr. Dunne.

The next speaker is Mr. Sosland for FGIC, who's been allotted five minutes.

MR. SOSLAND: Good morning, Your Honor. Martin Sosland of Butler Snow, LLP, for Financial Guaranty Insurance Company.

Your Honor, I want to speak briefly to the settlements that Your Honor is being asked to approve as part of the Confirmation Hearing.

Your Honor, is there a noise interfering with what I'm saying?

THE COURT: I can hear you fine. There were some little dings, but now they're gone. I can hear you fine.

MR. SOSLAND: Okay. Great. I wanted to make sure that wasn't interfering. There's a fire drill on the other side of my door.

THE COURT: Ah. There it goes, but speak on. I can hear you fine.

MR. SOSLAND: Thank you. So I won't repeat the repetition of the references to the evidence submitted by counsel for the Oversight Board and by Mr. Kirpalani related to the good faith -- evidence before Your Honor of the good faith negotiations that are an element to the settlements before your court. But as I prefaced in my opening statement, in addition to the evidence before Your Honor of the good faith negotiations that resulted in the evidence, I wanted to emphasize that Your Honor is uniquely situated, as settlements as part of confirmation hearings go, to make your own determination on the reasonableness of the settlements, because so much of the litigation that's being settled in each of the Plan Support Agreements that is in front of Your Honor has actually been litigated in this Court to various stages prior to the settlement.

And, Your Honor, in the Plan itself, there are definitions of the invalidity actions that are being settled at 1.316, and the lien challenge actions at 1.324 of the Plan,

to clawback actions defined at 1.137 of the Plan, to the ERS litigation at 1.224, to other actions, as well as to the Lift Stay Motions, to the extent they remain outstanding and are being resolved in the settlements.

FGIC, Your Honor, is a party to ten of those -- ten pending actions resolved by the Court if -- resolved and settled, and that will be dismissed by this Confirmation Order if you include one action still in the District of Puerto Rico that was commenced pre-Title III and is stayed, and if you include the DRA litigation on which Your Honor ruled; but pursuant to the DRA settlement, DRA waived its right to appeal the Court's determination.

We're also interested in a number of the invalidity actions and lien challenge actions before Your Honor in which we are not ourselves a party, and might have intervened absent the stays that were imposed, and then the settlements the Court is being asked --

(Sound played.)

MR. SOSLAND: -- to approve as part of the settlement.

Your Honor, we'd ask that you take judicial notice of the pleadings that were filed, and your -- in the adversary proceedings and lift stay motions before you in connection with your determination of the reasonableness of the settlements, because we think, without a doubt, that given the

range of outcomes, the outcomes that were reached in each of the settlements is reasonable, reasonable from the perspective of the estate.

The other point I would make is that it is uncontested at this point, as part of the DRA settlement, that the Court's rulings constitute the lien priority determination for purposes of the HTA PSA, which is embodied in the Plan, and attached to the Disclosure Statement.

Your Honor, I won't otherwise repeat the reasons for confirmation of the Plan that have been laid out by counsel before me, other than to say that FGIC submits that the Plan meets the requirements of section 314 of PROMESA to be confirmed, and the applicable provisions of section 1129 of the Bankruptcy Code. And we ask that your Court confirm the Plan.

One final point. As Mr. Dunne alluded, this is part of a global settlement, and we will address the PRIFA and CCDA modifications later in the day, but also we'll ask that those be approved. Thank you.

THE COURT: Thank you, Mr. Sosland.

The next party represented by speakers is National, and I have four minutes allocated.

MS. DIBLASI: Good morning, Your Honor. Kelly DiBlasi of Weil, Gotshal & Manges, on behalf of National Public Finance Guarantee Corporation.

Your Honor, I had prepared remarks today, but the arguments that National would offer in support of the Plan have either already been covered, or will be covered by counsel to the Oversight Board and counsel to the other PSA creditors. Therefore, in the interest of not being repetitive, I will not restate the points that have already been addressed, or will be addressed by others.

I'll state merely that National supports these arguments, including arguments in support of approval of the settlements, the exculpation clause, and the payment of fees and costs to be paid to National and the other PSA creditors.

On this last point, I'd like to supplement Mr. Kirpalani's remarks, and argue that the same legal arguments and facts he cited support payment of the HTA structuring fees as well. And there's additional evidence in support of this in Ms. Jaresko's declaration at paragraph 182, and in Mr. Zelin's declaration at paragraphs 84 and 90.

National supports the Plan, and appreciates the time and effort of this Court, the mediation team, and the parties in this matter that have allowed us to be here today. National respectfully requests the Court confirm the Plan.

Thank you, Your Honor.

THE COURT: Thank you, Ms. DiBlasi.

Next I have, for Assured, Mr. Ellenberg.

MR. ELLENBERG: If the Court please, Mark Ellenberg

of Cadwalader, Wickersham & Taft, representing Assured.

Your Honor, the technical objections to the Plan have been more than adequately addressed by those who have already spoken. I'm going to use my time instead to address the statements that we heard from private citizens on the second day of this hearing. Those statements were courageous, and heartfelt, and eloquent, and they deserve to be recognized.

Your Honor, bad things have been happening to good people and to good places for a very long time. The reasons are many, they are varied, they are complex, they're social, they're economic, and of course they're political.

Whether in the case of an individual, a corporation, or a municipality, bankruptcy can be a tremendous force for good, but it has its limits. There is no plan, there is no single order of this Court that can address all of the issues that were so forcefully described on day two of this hearing.

Without getting too lost in the weeds, I would note that if repayment of the legacy debt were truly the root cause of issues on the island, not a penny of debt service has been paid for the last five years, yet the conditions described on day two obviously still exist.

And, again, without getting too deep in the weeds, every municipality in every state in the union borrows money. Those borrowings are essential to the provision of infrastructure and other services that the population looks to

government to provide. If the legacy debt were simply eviscerated, Puerto Rico's ability to borrow in the future would be severely impaired. This would lead to a downward spiral that would make things not better, but much worse.

And while there are certainly some antidemocratic aspects to the Control Board's existence and operation, it is also undeniable that successive iterations of the Commonwealth's elected leadership made the decisions that created the need for PROMESA and the Oversight Board.

You can gain some insight and some hope from prior cases such as *Detroit*. There, an unpopular bankruptcy process produced an unpopular plan that, nonetheless, became the foundation of an economic revival. People started moving back. Businesses opened up and returned. The Plan sparked a new economic era. We foresee, there is every reason to hope, indeed to expect that the Plan before the Court can do the same for Puerto Rico.

Your Honor, over 40 odd years of practicing law, the one thing I have learned is that you can't always --

(Sound played.)

MR. ELLENBERG: -- get what you want, but you can usually get what you need. That is exactly where we find ourselves in this case, Your Honor. This is not the plan that anyone wanted, but it is the plan that we all need.

The Plan meets the criteria for confirmation as set

forth in PROMESA. We respectfully ask the Court to confirm it. Thank you.

THE COURT: Thank you, Mr. Ellenberg.

The next speaker is Mr. Pasquale, for AFSCME.

MR. PASQUALE: Good morning, Your Honor. Can you hear me well?

THE COURT: Yes, I can. Good morning, Mr. Pasquale.

MR. PASQUALE: Good morning. Kenneth Pasquale of Strook, Strook & Lavan, for AFSCME, American Federation of State, City, and Municipal Employees, on behalf of itself and its two local chapters in Puerto Rico, representing active and retired central government employees. With me, and representing AFSCME, is Sherry Millman of my firm.

AFSCME supports confirmation of the Plan of Adjustment as being in the best interests of the public employees represented by AFSCME, and its local chapters in Puerto Rico, as well as the Commonwealth. AFSCME represents more than 9,000 employees of the Commonwealth across many diverse occupations.

At the commencement of these proceedings, AFSCME vigorously pressed its legal claims to protect its members' pensions, collective bargaining agreements, compensation, and working conditions. Previous administrations refused to engage in collective bargaining, and health benefits and leave

benefits of government employees were reduced.

Participants in the System 2000, and those only in Act 3 pension plans, which include all workers hired after January 1st, 2000, and until January 21st, 2017, were left with no funds in their retirement accounts, despite making contributions into the system for years. In addition, public services performed by members of AFSCME's locals were proposed for outsourcing that could have resulted in substantial layoffs.

In that environment, AFSCME negotiated with the Oversight Board to guarantee its members protection from such harms in the future, and was able to reach an agreement that was ratified by AFSCME's members, and is ratified in the Plan of Adjustment and in the Plan Support Agreement between AFSCME and the Oversight Board.

There is evidence in the record through Ms. Jaresko's live testimony, and through the Oversight Board declarations concerning the benefits to the Commonwealth from the agreement with AFSCME. From AFSCME's perspective, there are significant benefits to its members from the agreement. I want to the just touch on those.

AFSCME negotiated terms of a new five-year collective bargaining agreement to provide certainty and security to its members, that protects health benefits, protects jobs from outsourcing, and provides its members with well-deserved cash

bonuses.

AFSCME negotiated for full payment of System 2000 balances for all participants, not only AFSCME's members, and an equitable settlement of the claims of Act 1, and Act 447 participants for their contributions into the system under Act 3, which was initiated when the former pensions were frozen in 2013.

The agreement also provides for the sharing with AFSCME members of any excess revenue surplus above and beyond the Certified Fiscal Plan in effect at the time the Plan is approved, based on a formula that provides for the sharing of excess revenue over 100 million dollars. And each AFSCME member receives no less than 2,000 dollars, should the threshold be met, and more if the formula so provides.

This is significant, because in the past, public employees have been hurt when the Commonwealth is struggling financially, but ignored in the better years. This agreement ensures that will not happen to AFSCME's members over the next five years.

AFSCME was also instrumental in negotiating for the establishment of the pension reserve, to be funded by the Commonwealth, as protection for pensioners in the future in the event there is a shortfall from the PayGo system to their pension benefits here for those public employees hired after 2000 -- excuse me, before 2000. The trust will be overseen by

representative active government employees, and the funds, therefore, will not be under the control of the government. The guidelines for this trust are still being negotiated between AFSCME, COR, the Board, and AAFAF, and AFSCME reserves all rights in that regard.

Puerto Rico's public employees are the heart and soul of the island, and they will be left to carry on and sustain the Commonwealth long after this proceeding is concluded. We've heard Mr. Hein contend during this hearing that AFSCME public employees are receiving too much. To the contrary, they are not getting nearly enough for all that they do in the circumstances in which they work.

The settlement reached by AFSCME with the Board as set forth in the Plan of Adjustment is the first step in what hopefully will be a stronger mutual relationship between AFSCME and the Commonwealth into the future. AFSCME believes the Plan is feasible and reduces the government's debt service burden to sustainable levels. This again is especially important --

(Sound played.)

MR. PASQUALE: -- because it is the employees who would be among the first to face the consequences of governmental austerity if that is necessitated by higher than sustainable fixed costs.

For these reasons, Your Honor, AFSCME respectfully

requests that the Plan be confirmed. Thank you.

THE COURT: Thank you, Mr. Pasquale.

The next speaker is Mr. Gordon, for the Retiree Committee, for 17 minutes.

MR. GORDON: Good morning, Your Honor. Can you hear me?

THE COURT: Yes, I can. Thank you.

MR. GORDON: Wonderful. Good morning, Your Honor. Robert Gordon of Jenner & Block, LLP, on behalf of the Official Committee of Retired Employees of Puerto Rico.

To avoid unnecessary duplication of remarks, my comments will primarily focus on, A, the application of the unfair discrimination test in the context of this case relative to the treatment of retirees; and, B, the importance of the modified proposed formula for funding the pension reserve trust.

I've been allocated 17 minutes, so I will need to speak somewhat briskly, and I apologize to the court reporter for that.

Your Honor, in colloquy with Mr. Rosen during the hearings last Wednesday, the Court inquired about the ramifications of Mr. Hein being a claimant only in classes of claims that have accepted the Plan, and, specifically, the impact of that fact on the Court's consideration of the so-called cramdown provisions under Bankruptcy Code section

1129(b), as incorporated in PROMESA.

And the question is a good one, the answer to which, I would submit, must be contextualized for any given case. On the one hand, section 1129(b) indicates that if any impaired classes of claims reject the plan, the Court must consider the cramdown requirements of section 1129(b) in order to confirm the plan over the dissent of such class. Those requirements include a showing that the plan, A, does not discrimination unfairly, and, B, is fair and equitable with respect to such dissenting class.

On the other hand, at least from the perspective of the Retiree claims, it should be noted that, A, no dissenting class -- and Mr. Hein is not in a dissenting class -- has actually objected that the Plan unfairly discriminates against it vis-a-vis the Retiree classes of claims, as Mr. Bienenstock mentioned earlier; and, B, the treatment of the Retirees does not create an issue under the fair and equitable test in section 1129(b)(2)(B), because the distribution to Retirees is not a distribution to a class that is junior to any dissenting class, to the best of out knowledge.

Thus, while the Bankruptcy Code and PROMESA may technically require the Court to consider unfair discrimination, and whether the Plan is fair and equitable, such analysis should explicitly recognize the circumstances mentioned here. However, notwithstanding that no dissenting

class has affirmatively raised the issue of fair or unfair discrimination, and that there is no section 1129(b)(2)(B) issue here, we submit that some discussion of these concepts is warranted as a matter of best practices to ensure a fulsome record.

The first point I wish to make in this regard, Your Honor, is one of clarification. In the Oversight Board's Memorandum of Law in Support of Confirmation, docket no. 18869, at paragraph 169, the Board correctly asserts that what is fair must be determined on a case-by-case basis. Therefore, comparisons to other cases can be a bit risky.

Nonetheless, the Board does provide a comparison to other public sector cases at paragraph 173. In this regard, we wish to provide one important clarification. At paragraph 173, the Oversight Board indicates that the proposed retiree recoveries in this case are consistent with the retiree recoveries in the *City of Detroit* case, but indicates that the recoveries in the *Detroit* case were approximately 60 percent.

This might lead one to wonder if the 100 percent recovery on accrued pension claims proposed in this Plan is truly consistent with the *Detroit* case. It certainly is consistent with the 100 percent recoveries in the California cases of *Stockton*, *San Bernardino*, and *Vallejo*, which are also cited in said paragraph 173.

However, the 60 percent figure used for *Detroit* is

misleading and merits some clarification. The 60 percent figure represents the so-called recovery on just the retiree claims for the unfunded portion of their benefits. The retirement system's were underfunded, but not completely without assets. But I can assure you, since I played an essential role in negotiating the retiree settlement in *Detroit*, that the negotiations did not focus primarily on how much the recovery should be on the claims for the unfunded portion of the retiree benefits. Instead, logically, and just as occurred in the Puerto Rico case, the focus was on the impact of any cut on the overall benefits to be received by a retiree. That is to say, the actual, real world impact on individual retirees.

In that context, the far more relevant figures from the *Detroit* case are as follows: A 100 percent preservation of the base pension benefit, aside from COLAs, for the police and fire retirement system participants; and a 95.5 percent preservation of the base pension benefit, aside from COLAs, from the general retirement system participants. And those figures, Your Honor, 100 percent and 95.5 percent preservation of base pension benefits are, indeed, highly consistent with the proposed treatment in this case.

Now, as to fair or unfair discrimination, at paragraph 170 of the Oversight Board's memorandum of law, the Board also correctly asserts that what is fair or unfair

discrimination, specifically and uniquely in a public sector restructuring, must focus on the needs of the debtor and what is fair to the debtor and its residents. The Board cites to *In re Richmond Unified School District*, 133 B.R. 221, among other cases.

And in this regard, the Court has the testimony of the highly credentialed Professor Simon Johnson, proffered by the Retiree Committee, docket no. 18716-2. Professor Johnson opines that any cut to the pensions of retired government employees would have a negative impact on Puerto Rico's economy, because retirees comprise a significant component of local demand in Puerto Rico. In his opinion, which no one has challenged, cutting pensions actually could destabilize Puerto Rico's economic prospects, lead to greater outmigration, and make it harder for Puerto Rico to obtain credit in the future, and that the savings from pension cuts do not justify the damage they would cause to the economy.

In sum, Your Honor, Professor Johnson's testimony highlights a unique characteristic of pension debt in a public sector case, that cutting the pension debt obligation actually hurts the debtor in its effort to rehabilitate by causing greater poverty, and, thus, a greater burden on social services, increased outmigration, less local spending, and a contraction of the economy, and, thus, less revenue support for essential services, and an unstable social and economic

environment that is not conducive to business.

And, Your Honor, there is nothing in the Bankruptcy Code or PROMESA that requires a debtor to take measures that are fundamentally antithetical to the rehabilitation process. From this perspective, fully protecting accrued pensions is not only fair, but also supported by sound economic principles and social policies.

Now, early in the case it had been expressed by the Oversight Board that some cuts to pensions may be necessary in the spirit of "shared sacrifice". However, as the Retiree Committee presented to the Board in our negotiations with the Board that resulted in our Plan Support Agreement, it must be acknowledged that, A, the accrued pensions of retirees in Puerto Rico were already terribly modest as of commencement of the Title III case; and, B, prior to this case, retirees had already sacrificed and suffered the effects of the government's fiscal irresponsibility. Therefore, any suggestion that retirees must sacrifice further ignores the concessions already made by retirees.

I will highlight here just a few data points, as set forth in Professor Johnson's testimony. First, based upon U.S. Census Bureau data from 2016, the average annual defined benefit, pension benefit of Puerto Rican Government employees was just $13,420, which was less than the average benefit in any U.S. state, and less than half of the U.S. average.

That's at docket no. 18716-2, docket page 113 of 161.

Second, in 2013, the legislature, pursuant to Act 3 of 2013, froze the accrual of benefits of the approximately 120,000 participants in the ERS system. As a result, a sample average Act 447 retiree experienced a 42 percent reduction in benefits. A sample Act 1 retiree experienced a 31 percent reduction in benefits. So ERS retirees experienced a very substantial cut to their benefits, and clearly sacrificed prior to the Title III case. Those facts are in Professor Johnson's testimony at docket pages 103 to 106.

Finally, in addition, since 2007, most retirees have not received a cost-of-living adjustment to their benefits. As a result, by 2019, retirees effectively experienced a 19 percent reduction in purchasing power. Professor Johnson's testimony, at docket page 109.

Your Honor, these pre-PROMESA concessions by retirees are appropriate for the Court to consider here. In the *City of Stockton* case, for example, Judge Klein noted the significant concessions made by labor prebankruptcy, and considered those concessions in considering that the debtor's plan was fair, and did not unfairly discriminate by protecting 100 percent of the pensions. That's *In re City of Stockton*, 526 B.R. 35, 61-62.

For these reasons, as well as those articulated in the Oversight Board's memorandum of law, we submit that the

Plan satisfies the requirements for confirmation under section 1129(b) of the Bankruptcy Code, as incorporated into PROMESA, vis-a-vis the Retiree classes of claims.

As to the pension reserve funding, Your Honor, back in the early stages of this case, when the Retiree Committee was negotiating with the Oversight Board regarding the treatment of retiree claims, it was the Retiree Committee that first proposed the concept of a pension reserve trust, because we believed that in addition to minimizing any proposed cuts to pensions, it was also important to provide assurance to retirees that pensions would be paid into the future.

There is particularly strong policy in public sector restructurings to try to ensure that there is never again a need for further restructuring, and the pension reserve trust squarely reflects that policy. The Oversight Board agreed that the pension reserve trust was a good policy, and we jointly incorporated it into the Retiree Committee's Plan Support Agreement.

The method or formula for funding the pension reserve has evolved over time, as the Commonwealth's economic trajectory and financial projections changed and evolved. And various creditor settlements shaped the use and availability of future cash flows. That said, the funding formula proposed by the Board in the Eighth Amended Plan is faithful to the original intent of the parties to create and meaningfully fund

the pension reserve trust to meet its purposes. So, shockingly, the government has opposed the new funding formula, even though it clearly benefits retirees, claiming, among other things, that it constrains the government's finances unnecessary and infringes on the government's sovereign right to set public policy.

On November 19, the Retiree Committee filed a joinder in support of the Oversight Board's position, docket no. 19317. As stated in our joinder, it is both ironic and terribly troubling to see that the government, which has repeatedly declared the paramount importance of retiree pensions, and fought for the right to keep its promise to pensioners, and pay all accrued pension benefits, now seeks to revert to a framework where those benefits are put at risk, because adequate resources may not be allocated to fulfill that promise.

Also terribly troubling is the government's continued inability to recognize the scope of fiscal policy that is within the purview of PROMESA and the Oversight Board. As opposed to matters of pure governmental policy, the funding of a pension reserve trust under the Plan falls squarely within that scope.

Section 201(b)(1)(C) of PROMESA requires that a certified fiscal plan, and, by extension, under section 314(b)(7) of PROMESA, the Plan of Adjustment itself, "provide

adequate funding" of pensions; not provide hollow promises of adequate funding. Similarly, PROMESA section 201(b)(1)(F) requires that the fiscal plan, and, again, by extension, the Plan of Adjustment "improve fiscal governance, accountability, and internal controls." And proper fiscal governance, discipline, and accountability is precisely what the Oversight Board's modified funding mechanism for the pension reserve trust is intended to create.

The government's track record on managing its pension systems is, to put it plainly, abysmal. An adequately funded pension reserve trust, Your Honor, is, therefore, an absolute necessity to help ensure the feasibility of the Plan as required by PROMESA section 314(b)(6) with respect to the government meeting its pension obligations under the Plan for the life of the Plan.

Accordingly, the Retiree Committee submits that the modified funding mechanism for the pension reserve trust under the Eighth Amended Plan should be approved, and, in sum, the Retiree Committee supports confirmation of the Plan.

Finally, Your Honor, if I may, I'd like to express two thank yous. First, to the Retiree Committee, your professionals thank you and commend you for understanding the importance of being both a zealous advocate for retirees, and a constructive participant in the restructuring process; for having the wisdom to achieve the best deal possible at a

critical juncture in this case, and, thus, pave the way for a successful restructuring that will benefit all the people of Puerto Rico; and to not play roulette with the lives and welfare of retirees; and for the courage to stay the course over the past two and a half years, helping to facilitate improvements to our own deal and ultimately achieve full protection and no cuts to pensions under the Plan; and keeping a stiff upper lip; and enduring unfair criticism from various groups who were intent upon spreading misinformation and disinformation about the Retiree Committee and its PSA in order to advance political agendas that had nothing to do with the best interests of retirees.

Amidst the machinations of others, the Retiree Committee was always the proverbial honest broker. You should be proud of your incredibly important work here.

Second, Your Honor, at the risk of appearing presumptuous regarding how the Court may rule --

(Sound played.)

MR. GORDON: -- on behalf of the Retiree Committee and its professionals, I'd like to thank the Court. Considering the sheer number of novel issues arising in this case under a new and untested PROMESA statute, and the magnitude of the interests effected by each ruling of the Court, this was a case for the ages. The Court deftly analyzed the issues and the law in each instance, establishing

an impressive body of well-reasoned decisional authority. And just as importantly, all the while, the Court managed this case with a tremendous patience and grace that was so important here.

We all owe the Court a nondischargeable debt of gratitude. Thank you, Your Honor. Unless the Court has any questions for me, that concludes my remarks.

THE COURT: Thank you, Mr. Gordon.

The next speaker is Mr. Despins for the Unsecured Creditors Committee for five minutes.

MR. DESPINS: Good morning, Your Honor, and thank you --

THE COURT: Good morning.

MR. DESPINS: -- for hearing from us. For the record, Luc Despins, with Paul Hastings, for the Official Committee.

As you know, Your Honor, the Committee fully supports confirmation of the Plan, and we do so, because it is the best result that we believe can be achieved under the circumstances. And we submit that practically, Your Honor, our class should be viewed as supporting confirmation of the Plan. And I'm saying this not only because, as stated in the opening remarks, we, by our own assessment, believe that about 80 percent of the class did not vote, thereby indicating their lack of opposition to the Plan, but more importantly, because

you've seen throughout these confirmation hearings that no one in our class is challenging the Plan treatment for the class. To be sure -- what I mean by that is nobody's arguing that the best interest of creditors test is not met, or other Bankruptcy Code standards. To be sure, some creditors are saying they don't want to be in our class, because they want to get paid in full, and we fully understand that. But no creditor is taking on the Plan with respect to the treatment of our class. That's very important.

And, finally, I would say that because the Committee is the only fiduciary for the Unsecured Creditors in the case, that should be viewed as practical support for confirmation of this plan with respect to our class under the Plan.

I want to address very briefly, Your Honor, some points made by Mr. Hein in his opening and throughout the proceedings, which is his stated point that it is incredibly unfair for him to be bound by agreements that he was not a party to. And to that -- and I'm going to echo I guess Mr. Dunne in that regard. I would say, join the club, in the sense that a lot of people around the table are not necessarily completely happy with the outcome.

But I want to remind the Court that it's not only because the Committee objected to the priority of the GO Bond that I'm making that point, but also to remind the Court that we were co-plaintiff and sometimes sole plaintiff with -- on

the issue of the disallowance of Late Vintage Bonds. And that we were seeking complete disallowance of those bonds, and not the -- what I would say is a more modest reduction that was negotiated by the PSA parties. So in that context -- and it's important to remember that there are other parties that are not entirely satisfied with the outcome of these cases from their point of view.

And finally, Your Honor, I wanted to thank the Court for your patience throughout the case. I know this has been a very long case, and you've had to hear from so many parties. And I want to really make sure that we recognize that you've been incredibly patient during these four years.

Thank you very much, Your Honor.

THE COURT: Thank you, Mr. Despins.

We will now turn to the objecting parties. I will call on Mr. Hein in a moment. Our lunch break -- I'm sorry. Have I missed --

MR. MINTZ: Your Honor, Doug Mintz for Cantor-Katz. I believe next on the Agenda should be Cantor-Katz and AmeriNat.

THE COURT: I am so sorry. For some reason I missed that, so sorry about that.

MR. MINTZ: There's a weird hyphenating -- a space in there, so maybe --

THE COURT: Well, I took notes from notes, so forgive

me, and please go on.

What is your time allocation?

MR. MINTZ: I believe it's eight minutes for me, followed by four minutes for AmeriNat, Your Honor.

THE COURT: Thank you very much. Please proceed.

MR. MINTZ: Thank you, Your Honor. Good morning, or good afternoon in your case. Doug Mintz from Schulte, Roth & Zabel, appearing on behalf of Cantor-Katz, Collateral Monitor, LLC, as Collateral Monitor for the GDB Debt Recovery Authority Bonds.

Before I start, I'll note that we are reviewing the last-minute filings over the weekend, and we've have already flagged one issue for the Oversight Board regarding the DRA parties' exculpation at paragraph 61(g) of the Confirmation Order. I don't believe we've heard back yet. We flagged that late last night.

When I spoke to you at the start of the month, I told you that the DRA parties reached resolution with the Oversight Board, and were supportive of confirmation of the Plan. And that remains the case.

In the last two weeks, you've heard evidence that all settlements were reasonable, and objecting parties have produced no evidence to the contrary.

The DRA parties' decision to settle and support the Plan came after intense litigation and complex but quick

negotiations. The Plan should be approved with respect to the DRA parties' settlements. These settlements are fair and reasonable, and as Mr. Rosen stated, are the product of extensive negotiations in good faith.

Under the Plan, and the agreed settlement stipulation, the DRA will receive a number of recoveries. First, the DRA's direct loan claims against the Commonwealth, which are classified as Class 40, 2012, CW Bond claims, they're in excess of 63 million dollars, and shall be deemed allowed under the Plan. These claims will be paid in the form of new GO Bonds, GO CVIs, and cash, with a recovery of approximately 72 cents on the dollar before any value from the CVIs.

Second, the DRA holds Class 59, CW/HTA claims based on ownership of 200 million dollars of HTA 98 Senior Bond claims. These are also allowed, and will be paid out of the CW/HTA clawback recovery, the same as any other HTA Senior Bond claims, 98 Senior Bond claims, in that case, second under the distribution waterfall set forth in Exhibit J to the Plan.

Third, as you know, the DRA holds Class 59 CW/HTA claims, based on its ownership of more than 1.7 billion dollars principal of the GDB-HTA loans. Those will also be paid out of the waterfall set forth in Exhibit J to the Plan upon satisfaction of the HTA distribution conditions. More on that in a moment.

Fourth, under the Plan, the DRA's claim at PBA, which the DRA parties assert consists of the Class 12 PBA-DRA secured claim in excess of 66 million dollars, and the Class 14 PBA-DRA unsecured claim in excess of 134 million dollars, shall each be paid in cash in an amount equal to ten percent of the allowed amount of the claim. These claimed amounts have not yet been fixed, but the stipulation provides for an expedited timeline for the Oversight Board to review the asserted amount of these claims, with an eye toward resolving them as quickly as possible. And this process is underway already.

Finally, in consideration for the agreement set forth in the stipulation, including the DRA's agreement to lock up its HTA Senior 98 Bonds and the HTA loans, the DRA shall receive a 15 million dollar restriction fee on the effective date of the HTA Plan in the form of an allowed administrative claim at HTA.

As part of the settlement, the Plan, the Confirmation Order, the findings and conclusions, as well as Your Honor's prior ruling, and Mr. Sosland referenced this briefly, all resolve the GDB loan priority determination as well. As this Court recalls, section 63.2 of the Plan states that upon finalization of the GDB loan priority determination, funds are distributed pursuant to the waterfall under Exhibit J of the Plan.

Paragraph 34 of the Confirmation Order further orders that upon satisfaction of the HTA distribution conditions, the DRA shall be entitled to receive its share of the CW/HTA clawback recovery as delineated in that same Exhibit J. The Plan defines the loan priority determination as the determination in either the Commonwealth Title III, or the HTA Title III with respect to the relative rights of recovery -- of finding that, with respect to the relative rights of recovery among the HTA 68 Bonds, the HTA 98 Bonds, and the GDB-HTA loans, or -- and/or a finding that the DRA did not possess an allowable claim with respect to the HTA clawback CVI.

The Confirmation Order states at paragraph 3(p) that your ruling granting the HTA bondholders' motion to dismiss with respect to our prior priority adversary proceeding, that's docket no. 83 in adversary 21-00068, qualifies as the GDB loan priority determination for the purposes of the Plan.

When you read all this together, Your Honor has determined or hopefully soon will determine that while the GDB-HTA loans are subordinated to the bonds, the DRA now has an entitlement to the provisions of the waterfall in Exhibit J, in satisfaction of the HTA distribution contribution conditions. And what is that distribution per annex six of Exhibit J, it comes forth, after paying amounts allocated to the bonds, the remaining clawback CVI payments, if any, go to

the GDB-HTA loans up to 1.47 billion dollars.

This distribution is consistent with your read of the security agreement, which broadly provides that after payment of the HTA Bonds, the GDB-HTA loans receive any surplus remaining from the revenues assigned and the proceeds acquired under the collateral, that is, the Excise Tax revenues. And so this Court has resolved the GDB loan priority determination, and these issues have been resolved consensually among the parties going further.

And as Your Honor has seen from the evidence submitted this month, the evidentiary record supports this position. And I won't repeat Mr. Rosen's statements, but multiple witnesses, including Ms. Jaresko and Mr. Zelin have testified to the reasonableness of the settlements. And most importantly, the Plan opponents have introduced zero evidence to the contrary regarding the DRA's settlements.

While the Collateral Monitor had a number of concerns about the legal arguments the Oversight Board has made, those concerns have now been resolved economically. The settlements embodied in the Plan are fair and reasonable, and in the best interest of the many creditors, and, most importantly, its citizens. No evidence has been presented at trial to show otherwise.

Thomas Jefferson is quoted as saying, never put off to tomorrow what you can do today. Well, after many years of

putting things off, it is now time to act today. No more putting things off.

So we hope the Court will move forward with confirmation, and allow the people of Puerto Rico to move on from this process to their next chapter. And, finally, of course, I will conclude by thanking Your Honor, as well as Judge Dein, and the Court's various staff for all the hard work you've put in over the last four years in these Title III cases, and remaining Title III cases still pending.

I have no further comments, unless Your Honor has any questions.

THE COURT: Thank you, Mr. Mintz.

MR. MINTZ: Thank you, Your Honor.

THE COURT: So we will now turn to counsel for AmeriNational.

MR. ZOUAIRABANI-TRINIDAD: Good afternoon, Your Honor.

THE COURT: Mr. Zouairabani, good morning.

MR. ZOUAIRABANI-TRINIDAD: Yes. Good afternoon over here, Your Honor, and good morning over there.

THE COURT: In New York, it's still morning.

MR. ZOUAIRABANI-TRINIDAD: Yes. So, Your Honor, Attorney Nayuan Zouairabani, for McConnell Valdes, LLC, on behalf of AmeriNational Community Services, LLC, the GDB DRA Servicer in this case.

Your Honor, we are heading into confirmation on an extremely rare and unique happenstance. Essentially, the stars have aligned in favor of confirmation of the Plan. Whether the objectors like it or not, the current plan is largely consensual, and all material creditors, including the DRA parties, have agreed and settled their claims in order to confirm this plan.

As the Court is aware, the DRA parties were among the last significant objectors to the Plan. Through the stipulation reached on November 5, the DRA settled and resolved the pending disputes with the debtors in relation to the Plan. And it is important to bear in mind that the DRA had claims and disputes with regards to 2012 GO Bonds, the DRA-PBA secured and DRA unsecured classes, as well as the CW/HTA claims with regard to the Plan. All of those disputes and all of those issues were settled. The DRA parties support the Plan.

Not only has the Plan garnered support from all material creditors, the Puerto Rico Legislature approved Act 53 of 2021, which the Oversight Board believes is satisfactory to consummate the Plan. It is important to stress, Your Honor, that the fact that a nonhomogeneous legislature in Puerto Rico -- we're not talking about bipartisan. We're talking about multiple parties -- was able to come together in approving this statute is not something that happens every

day.

The objectors to the Plan would like to see a, quote, unquote, perfect plan of adjustment that is tailored to their wants and needs. The chances for a plan to be perfect, in any bankruptcy, especially on a case of this magnitude, which is significantly larger than the *Detroit* Chapter 9 case, is slim. It's very rare.

In evaluating confirmation of this Plan, the Court should not lose sight of where the objectors stand in relation to their respective classes. Many of the objectors' opposition, like Mr. Hein, for example, are being brought in a context --

(Sound played.)

MR. ZOUAIRABANI TRINIDAD: -- where the respective classes have already accepted and approved the Plan. Accordingly, the provisions of section 1129(b) of the Bankruptcy Code are not available to these objectors, and the disputes they raise should not preclude confirmation of this plan.

Your Honor, the Commonwealth is the closest it's ever been to exit bankruptcy. It's been a long and difficult road to get where we are today, with a largely consensual plan. It is uncertain whether this extraordinary set of circumstances could be recreated and achieved again. Therefore, this opportunity should not be taken for granted.

Your Honor, personally, as a Puerto Rican who lives and works in Puerto Rico, and is raising a family on the island, with boots on the ground, Puerto Rico should be allowed the opportunity to finally emerge from bankruptcy. This Plan may not be perfect, but this could very well be the best chance to just do that, to emerge from bankruptcy.

Therefore, Your Honor, we join the other supporters in requesting that this Court approve the Plan. And with that, I have nothing else, unless Your Honor has any questions.

THE COURT: I don't have any further questions. Thank you, Mr. Zouairabani. I don't know why I'm having trouble with that today. Zouairabani. Good afternoon, because it is afternoon where you are.

MR. ZOUAIRABANI TRINIDAD: Thank you, Your Honor.

THE COURT: So is there anyone further who's scheduled to speak in support? My list was only partial.

I don't see any other hands, and so at this point we will break for lunch. We will resume at 2:10 San Juan time, 1:10 New York time. Thank you all.

(At 12:48 PM, recess taken.)

(At 2:11 PM, proceedings reconvened.)

THE COURT: Good afternoon. Welcome back, everyone.

There is a raised hand of counsel named Kissner for AHGCD.

MR. KISSNER: That's correct, Your Honor. Can you hear me?

THE COURT: Yes, I can. If you'd speak a little louder, that would be great.

MR. KISSNER: Absolutely, Your Honor. Is that better?

THE COURT: Yes, it is. Thank you.

MR. KISSNER: Thank you.

I tried to raise my hand before we broke for lunch, but was not quick enough on the draw. So, for the record, Your Honor, Andrew Kissner of Morrison & Foerster, on behalf of the Ad Hoc Group of Constitutional Debtholders, who are PSA creditors, as defined in the Plan.

Two things I wanted to raise briefly for the Court this afternoon that are of concern to the four groups that compromise the initial PSA signatories. First, as Mr. Bienenstock noted this morning, the Board last evening filed revised forms of the Plan and Confirmation Order, with redlines filed at ECF nos. 19324 and 19325, respectfully -- or respectively, rather.

And if I could direct the Court's attention to the exculpation provisions in the revised Plan, which is paragraph 92.8(b) on PDF page 197 of 306, and this is, again, ECF no. 19324. As folks can see, there has been a change to the exculpation rights for the PSA creditors, which would limit

the effect of that exculpation to liability, quote, incurred through the effective date. And that same language is also included in the Confirmation Order at paragraph 61(b), which is page 74 of 226, on ECF 19325.

And I only raise this for the Court because, while we don't dispute that an exculpation provision should only cover acts and omissions taken through the effective date, and the Plan already provides for that, this new language that we saw overnight we think could be construed to limit the exculpation to lawsuits that were commenced and judgments entered prior to the effective date, which clearly isn't the intention.

And in that vein, we would note that the analogous provisions for the Unsecured Creditors Committee and Monolines don't contain this error. We have been in dialogue with the Board's counsel the last couple days with respect to these provisions, and I'm hopeful that this can all be resolved consensually, but we just wanted to flag this for the record before the conclusion of the hearing.

The other thing I wanted to note briefly was, as Mr. Kirpalani noted this morning, the parties remain in discussion over the final forms of the trust agreement, so that new GO Bonds and CVIs, and as Mr. Rosen indicated, these documents will need to be included in a revised plan supplement. We are hopeful and expect that we will reach consensus on those documents, however, there are still open

issues, and accordingly, we reserve all rights with respect thereto.

Unless Your Honor had any questions, that was all I had, and I had nothing further.

THE COURT: Thank you, Mr. Kissner.

MR. KISSNER: Thank you very much, Your Honor.

THE COURT: So is there anyone else who wants to be heard before we go on to hear from the objecting parties?

I don't see any further hands. So at this point, I will call on Mr. Hein, who has been allotted 45 minutes.

Good afternoon, Mr. Hein.

MR. HEIN: Good afternoon. Can you hear me, Your Honor?

THE COURT: Yes, I can. Can you hear me?

MR. HEIN: Great. Thank you. Yes, I can. Thank you very much.

So just at the outset, I would note that despite the references to section 944(a) and 1129(b), the bottom line here is that no one disputes that I am entitled to press my objections to confirmation, because class acceptance or a settlement agreement entered into by others, despite that, the Oversight Board must still prove the section 314(b) requirements are met, including (b)(3), (b)(6), (b)(7), and (b)(1), to the extent it incorporates Title 11 requirements other than 1129(b).

For example, 1123(a) four, the same treatment provision, Title 11, would be encompassed within the (b)(1) requirement for confirmation.

THE COURT: Mr. Hein.

MR. HEIN: Sure.

THE COURT: Mr. Hein, I just want to interrupt you for one moment. Would you pull the microphone out a little bit further out from your face? We're getting a percussive sound when you speak.

MR. HEIN: Sure. Is this better, Your Honor?

THE COURT: Yes, it is.

MR. HEIN: Thank you.

On each of these requirements, the Oversight Board has the burden of proof, and the Oversight Board admits that in their papers.

So let's start with the 314(b)(6). Considering first just the initial clause in 314(b)(6), the Oversight Board has the burden to prove the Plan is feasible and in the best interest of creditors. And that provision is out of 943(b)(7) from Chapter 9.

But the PROMESA requirements do not stop there. They don't stop where Chapter 9 stops. PROMESA 314(b)(6) goes on in an additional clause to say, which shall require the Court to consider whether available remedies under the nonbankruptcy laws and Constitution of the territory would result in a

greater recovery for the creditors than is provided for in such plan.

This additional language, which is not part of Chapter 9, has meaning, otherwise it wouldn't be here. Congress was well aware that parties in the Puerto Rico situation asserted both priorities under the Puerto Rico Constitution, as well as secured status, and Congress added requirements to PROMESA for plan confirmation in (b)(6) that specifically require the Court to look at how creditors would fair under the nonbankruptcy laws and Constitution of Puerto Rico. And this is PROMESA itself requiring this. There can't be any preemption issue.

The Puerto Rico Constitution, as I think Your Honor is aware, provides GO bondholders a first claim priority, and specifically Article VI, Section 8 says, quote, the public debt and amortization shall first be paid. Shall. It's not optional. And this priority is enforceable under Article VI, Section 2, paragraph 3 of the Puerto Rico Constitution.

And I might add, these provisions were adopted when the Constitution and amendments were adopted by referendum, referendum of the people of Puerto Rico. And Commonwealth statutes, such as 23 L.P.R.A. 104(c)(1) follow this Article VI prioritization of payment of GO debt service.

The constitutional priority for the payment of GO debt is also reinforced by other Puerto Rico laws, such as Act

33 of 1942. And this is a provision and section that Mr. Bienenstock referred to. Section 7 of Act 33 provided, quote, the good faith of the Commonwealth of Puerto Rico is hereby irrevocably pledged for the payment of GO bonds. This irrevocable statutory pledge to pay Puerto Rico's full faith in credit GO debt was backed up in section seven by a commitment that the GO debt would be paid with any available funds at the Commonwealth Treasury, quote, which funds are appropriated as continuous appropriations, without it being necessary to make new appropriations for said purpose.

And as an aside, Mr. Bienenstock mentioned that Act 33 was apparently repealed two months ago, in September. If so, this would be a willful violation of the constitutional prohibitions against impairing contracts, both in the United States Constitution, and in Puerto Rico's own Constitution. A repeal of Act 33 would also constitute a taking, giving rise to a now existent claim for just compensation.

Now, the Oversight Board argues that, in essence, one should adopt the approach in Chapter 9 to (b)(6), but the Oversight Board's argument completely ignores the specific Congressional decision to require that the Court consider whether available remedies under the nonbankruptcy laws and Constitutions of Puerto Rico would result in a greater recovery for creditors.

Available remedies are creditor specific. The GO

bondholders have a constitutional and statutory priority that other creditors do not have. And, thus, it has to be addressed, creditor specific, under (b)(6). And a simplified example shows why I think it makes no sense to read (b)(6) as looking to creditors as a whole.

So assume, hypothetically, that you had ten billion of priority first claim GO debt, and ten billion dollars in unsecured claims. And let's assume, hypothetically, two-thirds of the GO bondholders strike a deal where GO bondholders will get 50 cents on the dollar, and then later a plan is proposed where unsecured creditors get 10 billion, 100 percent of their claim. This is a hypothetical.

In this event, the Oversight Board would argue that if 15 billion dollars is the maximum that could be distributed, even if the GO bondholders could recover ten billion, because of their priority position under Puerto Rico law, leaving just five billion for the unsecured, nevertheless, a plan that despite utterly reversing the priorities established by the nonbankruptcy laws and Constitution of Puerto Rico could be perfectly fine, and supposedly comply with (b)(6), regardless of how the creditors -- regardless of how the recovery was racked up among the creditors, simply because the creditors as a whole can't get more than 15 billion.

Respectfully, this makes no sense. The point of

(b)(6), looking at Puerto Rico law, is to respect the priorities under Puerto Rico law, not reverse them.

And now I'd like to look at the evidence on the record on the best interest point, and I might add the numbers I'm going to mention are based on Puerto Rico's own public reports. I put them in evidence. They're summarized and cited in my objection, and in my declaration in evidence. That's 19047. The objection is 18575.

Puerto Rico's own reports show that Puerto Rico is sitting on 25 billion in cash. Thirteen billion of that 25 billion can be used to pay the GO and PBA Bonds. Indeed, 745 million of the 13 billion can only be used to pay GO Bonds. And this cash has accumulated, despite Puerto Rico, for the past five years, contrary to its constitutional priorities, paying all monthly pension benefits and every penny of operating expenses, yet not a penny for GO debt service.

In the last four years, fiscal '18 through '21, total outlays have increased over 29 percent. Yet still not a penny for GO debt service. And this is shown in my declaration, 19047, page 17, paragraph 44, based on exhibits at 18760-15, 18760-16. No proof of necessity of this 29 percent increase in outlays over four years has been presented.

And I've also submitted proof from Puerto Rico's own financial records that the total amount of past due interest and principal owed on the GO and PBA bonds is 7.45 billion.

You start with the 6.79 billion due on the GO and PBA debt as of May 31, 2021. That's per note 3(d) in the financial report that was filed three years after the fiscal year ended for fiscal 2018. But there's a note to reflect subsequent developments. This is shown on 19047, page six, paragraph ten, based on Exhibit 18760-31. And then you add in a pro rata share of the annual debt service, which is shown in Debtors' Exhibit 31, page nine, and you get to the 7.45 billion.

So because there's 13 billion that can be used to pay GO and PBA debt, Puerto Rico could pay off it's entire past due GO and PBA debt today, and still have 5.5 billion in unrestricted cash, and over 17.5 billion in total cash left over.

I also submitted Puerto Rico's own report showing that Puerto Rico had a four billion dollar surplus in the last fiscal year. 3.97 billion, to be precise. This is shown on 18759-4, page nine, and refer, Your Honor, to the fiscal year '21, actual year-to-date column.

And so I mentioned that the annual debt service is 1.3 billion. In other words, because the surplus was four billion, in the last fiscal year, the surplus was three times what was required to pay GO and PBA debt service. And that's despite, that's after Puerto Rico paid all pensions, all operating expenses last year.

So to apply (b)(6) to the situation at hand, applicable remedies would result in a greater recovery under Puerto Rico law to GO and PBA bondholders. GO and PBA bondholders would collect all principal and interest due to date, as well as have the ability to collect principal and interest going forward.

And I would note, and this is significant, in response to a chart Mr. Kirpalani presented, debtors admit in the best interest report assumptions that, under the nonbankruptcy laws of Puerto Rico, bondholders would be entitled to all accrued interest, including post-petition accrued interest. I refer Your Honor to Debtor Exhibit 130, which is the best interest test report, page 13, paragraph one; page 39, item nine, assumption (i). And this point actually appears several times in the best interest report.

So it's not just the accrual through the petition date. Under Puerto Rico law, it would be all accrued interest to the present time, and that is not accounted for in what Mr. Kirpalani showed. When you account for that, my recovery, even on Vintage Bonds, for which there was never, ever, by anyone, any issue of validity, my recovery is going to be about 58 percent, and on other bonds, even less, like 53 percent.

So what has the Oversight Board offered to try to meet its burden of proof, and attempt to respond to the Puerto

Rico financial documents I've offered? Basically, they've presented McKinsey, and this best interest test report. But on cross, respectfully, I think that the presentation just fell apart. Mr. Shah admitted, as he had to, given what was the language of the report, that the analysis was prepared based on a 70-page appendix of legal assumptions that he had been given by the Oversight Board's attorneys, and that McKinsey did not independently verify any of the information or assumptions he had received from the Oversight Board, or their advisors, or the government Puerto Rico, or their advisors.

And I used the question about population to underscore how this just eliminated any element of support in terms of meeting a burden of proof from this best interest test. And I asked Mr. Shah, well, on the question of Puerto Rico's population, if the Oversight Board stated the population was 2,928,000, but the United States Census actual count is 3,285,874, would McKinsey use the lower 2.9 million number or use the roughly 3.3 million number in the U.S. Census. And Mr. Shah admitted that McKinsey would use the lower Oversight Board number, that understates Puerto Rico's population by almost ten percent. And I've placed the U.S. Census number into evidence, that's 18759-3.

And, interestingly, the U.S. Census showed that in 2020 Puerto Rico's population had increased from their 2019

estimate. In contrast, the Oversight Board not only shows lower population, but shows a steady decline in Puerto Rico's population going into the future forever.

McKinsey also just accepting that all operating expenses just have to be paid before any GO or PBA debt could be paid, and that all current tax expenditures, which, per the Oversight Board itself, costs Puerto Rico over 21 billion dollars, all of that just continues unabated.

And I set out in my objection specifics, specifics as to expenditures for which there'd been no proof of necessity. And just as examples, you know, the thousands of advertising representation or artistic services contracts, that's 300 million over the past four years, thousands of consulting contracts aggregating 2.3 billion in that same time period. There's been no actual evidence shown in the record as to why this is necessary.

The 21 billion in tax expenditures, that comes right out of the Oversight Board's own current fiscal report, fiscal plan report. That's 21 billion in foregone revenue. The Oversight Board itself admits in its report that Puerto Rico offers far more generous tax incentives than virtually every other jurisdiction. I mean magnitudes more. But the McKinsey analysis just assumes all of this will continue.

If every operating expense can come before GO debt service, there'd be no reason for Puerto Rico to ever reform.

And the current state of affairs, which if it continues, will adversely impact Puerto Rico's ability to pay its obligations, even its obligations on the newly issued debt as part of the Plan, also reflects, as the Oversight Board's own expert, Dr. Wolfe, admitted in his testimony and in his report, that -- Dr. Wolfe admitted that the Puerto Rico Government has largely failed to implement recommended structural reforms that could enhance private sector growth, and tax revenues, and that could achieve government economies. His report is in the record, and the cross is in the record.

The Oversight Board here is the representative of the debtor, and just generalized assertions by the Oversight Board cannot justify a discharge from liability when the debtors' own financial records show a present ability to pay all past due debt service and all current debt service on an annual basis. And even without reforms, it can be paid.

The fact that changes in reforms that could actually improve Puerto Rico's financial condition and further enhance its ability to meet all of its obligations have been identified, but per Dr. Wolfe, the Oversight Board's own expert, the Puerto Rico Government has not been willing to act on them, just underscores the lack of proof that all operating expenditures and all of these tax expenditures are actually essential.

The Oversight Board's premise is that just as in the

Title II budget context, the Oversight Board's fiscal plans, even in this confirmation context under Title III, are effectively immune from challenge, despite admitting that it has the burden of proof under 314(b). But, Your Honor, in denying the Oversight Board's in limine motion, correctly recognized that the 314(b) requirements are for the Court. The Oversight Board's assertions are not binding. The Court has to make factual findings, and, thus, to meet its burden of proof, the Oversight Board needs to prove up facts which it has not done. And the Oversight Board is basically saying that -- let's ignore the financial reports, ignore that today Puerto Rico could pay its debt service, instead, the Oversight Board focused on forecasts about supposedly what will or won't happen in the future.

The Oversight Board's May 27, 2020, Fiscal Plan, and this was issued one month before fiscal 2021 began, estimated there would be a surplus in fiscal 2021 of only 440 million. But, in fact, per Puerto Rico's own reports in evidence, and I'll refer Your Honor to 18759-4, page nine, in fact, the surplus for fiscal 2021 turned out to be ten times greater, as I've mentioned, approximately four billion.

So per the -- it's one thing to say that under Title II, for budgeting purposes, the Oversight Board's financial plans can't be challenged. If the Oversight Board turns out to be wrong, it can just be adjusted going forward in the next

year. But in this Title III proceeding, the Oversight Board is seeking to cut off bondholder rights to payment forever. Forever. They're not saying that if things get better, bondholders are going to get their money back after all. They are forever trying to cut off bondholder rights, and despite the present ability to pay, and the fact that they had surplus three times what was required to pay debt service just in the past year.

The fact that Puerto Rico does have the ability to pay reinforces, I believe, my constitutional takings claims and Uniformity Clause claims, and I'll just take a minute on this. The issue arose in a session last week, well, what is the record evidence on what was taken, and I submit, Your Honor, the fact that demonstrably, per its own records, Puerto Rico could pay today, and has the ability to pay on an annual basis, is, you know, substantial evidence. The issue here is not the ability to pay. The issue is really willingness to pay.

And Your Honor remembers Mr. Bienenstock referring to the repeal of Act 33. I mentioned that a few minutes ago. What the repeal of Act 33 -- you've got an irrevocable pledge in a Puerto Rico statute, and then they just repeal it. And what this highlights is, the issue here is willingness to pay. Puerto Rico would prefer to keep the money for other uses. And under the *U.S. v. Virginia Electric* case, 365 U.S. 624,

631-636, market value is not the exclusive method of valuing for a takings claim, and that no weight can be given to the prospect of government appropriation or a government-caused impairment of value.

And then, on the uniformity clause, the fact Puerto Rico has the current ability to pay is relevant, because Chapter 9 that applies throughout the country, except for Puerto Rico, Chapter 9 requires proof of insolvency. That's 11 U.S.C. 109(c)(3). But in this PROMESA proceeding, proof of insolvency is not being imposed as a requirement for a discharge.

The Constitution of the United States states that Congress is authorized to adopt uniform laws on the subject of bankruptcies throughout the United States. So if a solvent debtor can obtain a discharge under PROMESA, but nowhere else in the country could a solvent debtor obtain a discharge, I submit that this is just plainly not a Uniform Bankruptcy Act. And as per the Supreme Court in the *Aurelius* case, the Territory Clause does not trump other specific provisions of the Constitution. And I'd submit the Bankruptcy Uniformity Clause is one of those specific provisions.

So let me come back to the other requirements for confirmation that I'd like to briefly refer to, and the next is (b)(7), 314(b)(7), the requirement that a plan adjustment be consistent with the applicable fiscal plan. There's a

legal argument that, because under PROMESA 201(b)(1)(N), the Oversight Board is required to respect the relative lawful priorities or lawful liens as may be applicable in the Constitution, other laws, or agreements, because of that requirement for a fiscal plan, that when you come to the confirmation stage, that that respect for the priorities under Puerto Rico law is required under (b)(7), as well as (b)(6), but Your Honor doesn't need to reach that issue for this purpose -- and I briefed it in connection with the in limine -- because here the Oversight Board has failed to prove that the current Modified Eighth Amended Plan of Adjustment is consistent with the current April 23, 2021, fiscal plan. And when you compare the fiscal plan with the current Plan of Adjustment, it's clear they're not consistent.

For example, if you go to the current fiscal plan that's been marked as Debtor Exhibit 10, it's in the docket at 18785-10, if one turns to page 276 of 309, there's a section headed 20.2.2 8.5% pension benefit reduction. In bold type, the Oversight Board states, in the current fiscal plan, that a reduction in pensions with protections for participants close to the poverty level is necessary for the Commonwealth to achieve long-term fiscal stability. And in the Disclosure Statement that was given to people to vote, the Oversight Board actually used the word "essential", that the pension reductions in the monthly benefit were essential. That's

docket 17628, page 62 of 654.

So -- and according to the Oversight Board's own expert, Ms. Levy, had the reductions for people with a benefit over $1,500 per month been implemented, there would have been a savings of 1.9 billion. There will no longer be, under the current Plan of Adjustment, that 1.9 billion of savings that was part of the fiscal plan.

On top of that, as part of the legislation in Act 53, there was a host of additional measures, ranging from a guarantee of 500 million per year for five years for the University of Puerto Rico, that would be a total of 2.5 billion guaranteed, to additional funding to municipalities that the Oversight Board agreed to add, that also wasn't on the table at the time of the Fiscal Plan. The Oversight Board's letter is in the record, 18760-11. So -- and I might add, before it agreed to this stuff, the Oversight Board had a very stern statement in the record at 18760-12 as to how fiscally irresponsible the legislature's demands were, but then Act 53 happened anyway.

Other recent expenditures include this -- it's going to be 11,000 dollars per employee in cash bonuses to the public employees of one union, AFSCME, which happens to be the union that struck the first deal with the Oversight Board in the summer of 2019. And Mr. Santambrogio's supplemental declaration says that this is going to cost 91.5 million over

the next five years. This, too, is not part of what was on the table at the time of the current fiscal plan.

Now, the Oversight Board may argue, well, we're going to have a new fiscal plan, but this is the fiscal plan currently on the table. It is plainly not consistent with the Plan of Adjustment being proposed. Thus, the (b)(7) requirement fails.

And then coming to (b)(3), the Oversight Board must prove that the debtor is not prohibited by law from taking any actions necessary to carry out the Plan. I briefed this in my objection at 18575, pages 24, 28 to 31, and 41 to 46 of 303, as well as in my sur-reply, which was 19093.

Just several quick points. PROMESA itself imposes the (b)(3) requirement, so preemption is not an answer. PROMESA does not preempt itself. And, second, the new bond legislation is a precondition of the effectiveness of the Plan, but the new legislation cancels and extinguishes the GO and PBA Bonds. That's a violation of Puerto Rico law, and of the U.S. Constitution, including the Takings Clause and Contract Clause.

And then, Your Honor, turning to (b)(1), the Oversight Board must prove that the Plan complies with the Title 11 provisions that were specifically made applicable to PROMESA. And that includes the same treatment requirement of 1123(a)(4). And on the same treatment requirement, I note

that on the 1.321 percent, Your Honor had asked Mr. Rosen a question, I think it was on November 15, as to whether a retail investor who did not vote would still get the 1.321 percent. I responded, citing specific language in a communication I received from my broker, which certainly appeared to me to be something that had been supplied to them by an agent for Puerto Rico.

And I think, Your Honor probably recognizes this, but in light of the response, which I do appreciate, from Mr. Rosen and the Oversight Board in terms of their now willingness to address this issue, effectively, I think the Oversight Board is acknowledging that I was correct in my concern, and I do appreciate their taking steps to try to at least partially address this, although I think it would be simpler to just pay the 1.321 percent to everybody.

But you also have an equal treatment as to the 1.5 percent, and per the Plan section 3.3, and this is just on the face of the Plan, it's a pro rata payment. It's based on the bonds held. There's no requirement that anyone do any work or incur any expenses. Pro rata payments I submit need to be paid to all.

I'm not saying that the PSA creditors who entered into the initial PSA agreement, that they shouldn't get the 1.5 percent. I'm saying that everybody should get equal, same treatment, and get the 1.5 percent.

Mr. Brownstein's testimony underscores that 1.5 percent is significant, because Mr. Brownstein explained that while it's worth having these splinter bonds issued, so you may get a proliferation of securities, but that increases the consideration by roughly -- I think he said two and a quarter percent. And then he said, yeah, there might be a penalty if you try to sell it, because of the lack of liquidity, but that might be roughly one half of one percent or so, so you'll end up with, you know, 1.5, one and three-quarters percent better.

Well, per Mr. Brownstein's own testimony, if one and a half percent added consideration is significant enough to put people through the aggravation of this proliferation of splinter bonds, and the associated tax, and just record keeping nightmare for individuals, I submit that 1.5 percent is significant, and ought to be distributed to all, not just two-thirds of the institutional investors who are getting it. Right now roughly two-thirds of the bondholders, the institutional investors are getting the one and a half percent extra. I submit that everybody, including the retail individual investors are entitled to that one and a half percent as well.

Mr. Zelin said, well, this one and a half percent, he knows how hard the people on the other side of the table worked, and one of the groups or two of the groups gave him an e-mail kind of estimating their expenses, but bear in mind the

Oversight Board has the burden of proof here to prove compliance with same treatment.

They did not even have Mr. Zelin, as I recall, state on the record what the amount was, and there wasn't even a claim that every party who is getting the one and a half percent did the same or, for that matter, did anything in particular.

The Oversight Board has failed to prove that the 1.5 percent is anything other than a pro rata payment, which if it's a pro rata payment, clearly it should go to all. The sheer size of the payment, the aggregate amount, when you multiply it against the two-thirds of the bonds that the people who get it are getting is over 176 million. So that, too, suggests that this is just added consideration being paid pro rata.

And, again, I'm not suggesting that the parties to the initial PSA shouldn't get the one and a half percent. I'm just saying that same treatment under the Bankruptcy Code requires that everybody get it.

I've also estimated in my declaration what the cost is of actually providing equal treatment, so that individual investors get the same treatment. The cost of that equal treatment is far less than the steps that the Oversight Board has taken by way of eliminating the pension modification, which is 1.9 billion, you know, paying these additional

bonuses to just the public employees associated with one union, which is over 90 million. The cost of simply providing equal treatment to all bondholders would be, you know, probably just five or six percent of that over two billion of additional costs that just in the last few weeks the Oversight Board was willing to incur.

Whatever the courts may accept in the rough and tough world of bankruptcy when you're dealing with corporate bankruptcy, I submit to Your Honor here that rough and tumble, hard-nosed conduct just has no proper role in this case. We're dealing with a municipal issuer that sold bonds that were investment grade rated throughout the United States for years, you know, referencing their Constitutional pledge that the GO Bonds and the PBA Bonds had a first priority of payment. At the time the bonds were sold throughout the country, there was not even a right of Puerto Rico to seek bankruptcy protection. And Puerto Rico, in each of the official statements, proudly proclaimed at the time that it had never defaulted, which, unfortunately, they're never going to be able to say again.

Your Honor knows that in April of 2019, I moved to appoint a bondholder committee whose members would have been selected by the U.S. Trustee, but being selected by the U.S. Trustee, they would have represented all bondholders, or at least had a fiduciary duty to all bondholders. And either

all, or some, as I proposed, would be individual investors. But the key thing is they would have had fiduciary duty to those who their committee represented. I submit, Your Honor, respectfully, that had there been a bondholder committee with fiduciary duties, that everybody in fact would be getting equal consideration today.

Now, the other issue is this issue of releases, and I recognize that the Oversight Board has substantially narrowed the scope of releases. The one issue that is open is this issue, they refer to it as exculpation, but it really is just release in another name. It basically would provide that someone shall not have or incur any liability to an entity.

I have a very specific proposal on language, which is simply to take the language that the Oversight Board has used. For example, in Plan section 92.2(a), they have a prefatory clause, without prejudice to the exculpation rights set forth in 92.7, but then they go on to say nothing in the Plan or Order is intended, nor shall be construed to be a plan of a nonconsensual third-party release of the PSA creditors, AFSCME, or each of their respective related persons.

And I would submit, Your Honor, that that language, without the "without prejudice to" clause should be added to 92.7(b), 92.7(e), and the parallel provisions of the Order. This is taking their own language and just applying it consistently to this additional provision that effectively

does provide a release. And it's something where you just can't escape the fact that the parties who were involved in the negotiation received added consideration, and that no one was there acting as a fiduciary for all bondholders, including individuals.

If individuals had received the same treatment, if individuals were also getting the one and a half percent, that's one thing. And, you know, then maybe they'd have an argument that having this additional release language is appropriate. I submit that unless everybody's getting equal treatment, it is not.

Now, I'm sure Your Honor is concerned about what would happen if the Plan is not confirmed. I would submit that there's actually the capacity to make payment of past due interest and principal. The Oversight Board could redouble, which unfortunately have been largely unsuccessful efforts to date, to rein in spending, to make the structural reforms, to put in place financial controls. Deferring the payment to debt rather than simply refusing to pay what is owed, I'd also submit offers a greater promise of future re-entry to the credit markets.

But I think, Your Honor, you can turn the question what would happen if the Plan is not confirmed around, and the question would be, what's going to happen to Puerto Rico if you do confirm? Because based on this record, I don't think

they've proven the feasibility of the Plan.

One of the key things that the Oversight Board was supposed to do was to get financial statements, certified, audited, financial statements up-to-date. That hasn't happened. The financials -- the certified financials have just gotten later than they were before PROMESA.

You also have an issue with controls. Just last month, the Oversight Board itself sent a letter to Puerto Rico observing that internal control weaknesses identified by the auditor going back over five years to 2016 remained unremedied. That's 10760-13.

I've mentioned before that outlays are up 29 percent in the last four years. I've mentioned Dr. Wolfe's testimony that structural reforms have been proposed for years, but just have not been adopted. And I submit that were this plan to go forward, there's been no proof that the necessary reforms are going to be taken, which I think the people of Puerto Rico, including those in the private sector, very much need as well.

One of the key aspects of PROMESA also was restoring access to the credit markets. That is in PROMESA 209. But then we see this fight with the legislature that the Oversight Board is having over adopting new bond legislation, and we see this fight that we just heard more about today where the legislature just per Mr. Bienenstock on November 11th was trying to push for immediate effectiveness of Acts 80, 81, and

82 at a cost of five billion dollars. And it just -- it's hard to see how Puerto Rico, with this dynamic, if the Plan is confirmed, is going to get access restored to the credit markets.

I think it's notable, Your Honor, that the Oversight Board's own experts assume in their reports that no new debt is going to be issued through at least 2051, and I think that's probably an assumption, because without the necessary structural reforms, without actually adopting rigorous fiscal responsibility, fiscal controls, it's very hard to see how Puerto Rico ever reenters the credit markets at reasonable rates. Puerto Rico will lack the access to credit markets that states and municipalities throughout the country deem so vital to their long-term success, and I think -- this is I think doing a great disservice to the great majority of the people in Puerto Rico, who are not employed by the government, but are part of the private sector.

A final note, Your Honor, on the Takings Clause, and that is, I wanted to respond briefly to the question of whether the takings claim of a bondholder could be excepted from discharge. I'd submit there's no reason why, even if the Plan is confirmed, one could not except from discharge a bondholder takings claim, whether it's based on -- you know, for example, it could be based, among other things, on the repeal of Act 33 that I mentioned, or be based on, you know,

adopting the legislation in Act 53 that basically nullifies the current bonds.

But there's no reason why that takings claim could not be excepted from discharge. It doesn't guarantee a recovery on the claim. It's not speaking to whether the claim has merit. It's not speaking to what the just compensation would be. And, clearly, whatever was received under the Plan in terms of value would, you know, offset whatever recovery occurred on the takings claim under the Supreme Court decision in *Security Industrial Bank*.

The Bankruptcy Clause cannot override the Fifth Amendment. I believe all of the Fifth Amendment takings claims should be excepted.

And, finally, Your Honor, I want to make a personal note, out of respect for the Court. I have a commitment today that I just can't break, that I have to leave shortly after 4:00 for. I don't mean to -- and would not suggest holding up these proceedings, but I just wanted to tell Your Honor that if I'm offline, it's not out of disrespect to the Court or other parties. I'm just not able to alter this commitment.

And I thank Your Honor very much for the time.

THE COURT: Thank you, Mr. Hein, and thank you also for giving me notice of your schedule.

Next we will hear from Mr. Samodovitz for 16 minutes.

MR. SAMODOVITZ: Yes. Can you hear me?

THE COURT: Yes. Good afternoon.

MR. SAMODOVITZ: Okay. Thank you. Let me talk about the voting process first. The affidavit of Ms. Pullo, docket 19115, contains the official vote tally for each class. It lists only 27 votes for Retail Class 47 for the 2014 GO Bonds which I own. Neither the Pullo Affidavit, nor the FOMB reported how many total bondholders are in Class 47, or the total value of bonds in Class 47. And, presumably, there were many more bondholders in bonds that were not counted in the vote.

The fact that we may now get the 1.3 percent retail support fee is no substitute for the right to vote against larger losses under the Plan. The present two-step voting process is for bondholder classification, and voting was complex and confusing to both the brokers and bondholders.

In July, the FOMB instructed the brokers to ask the bondholders in Retail Class 47 if the bondholders wanted to opt into the Plan, so the bondholder would qualify for an extra 1.3 percent recovery, but the bondholders said no. If the broker did not tender the bonds, the bondholders remained in Retail Class 47, and did not opt into the Plan, which I think was the case with me.

However, this morning the FOMB attorney stated that unless the bondholder was certified as a retail investor, the bondholder's taken out of Class 47. I am not sure if my

broker knew to do this on my behalf. I was not aware of this requirement, because this requirement was not well known, and, if true, prevented me -- it prevented me, and probably other bondholders, from voting in the retail class, which was my proper class.

Next, in September, someone instructed the brokers that the 2014 GO bondholders could then vote to accept or reject the Plan. Some brokers apparently confused this voting process with the Plan with the previous opt-in process for the PSA, and handled "no" votes in the same way they handled prior bondholder decisions not to opt in. I.e., by not tendering the bonds to the DTC.

For example, in my case, in September my broker sent me the same form as in July, and asked me if I wanted to accept the plan. And when I said no, the broker did nothing more, assuming that was sufficient to not accept the Plan. But this did not result in a "no" vote to whatever class I was in at the time. But there was -- it appears there was also a second step between not opting in and voting no, and bondholders such as myself were not counted in the vote.

It also discriminated against opponents of the Plan, because brokers knew to opt in or vote yes for the bondholders, the broker had to tender bonds to DTC, but to vote no, some brokers thought no action was sufficient by default to not accept the Plan. Also, the requirement to

tender one's bond to a third party in order to vote was an unreasonable deterrent to voting. Imagine if a state or municipality required a resident to tender a deed to his or her house to register to vote to ensure the person did not move before election and try to vote in two different states or municipalities. Certainly that would be an unreasonable deterrent to voting.

Also, it is surprising that all 27 official votes from retail class were yes votes, because all of these voters had previously chosen not to opt in to the PSA in July, and consequently risk their qualification for the extra 1.3 percent recovery. Were any of these 27 voters associated with the institutions that negotiated in support of the Plan, and did they buy the bonds and opt out of the PSA in July solely to remain in the Retail Class 47, and later vote the retail class in favor of the Plan? If all this is true, their motive in acquiring the bond was not proper as required by the law, because of the confusion and the classification and voting process.

Before a decision on confirmation is made, the voting period should be reopened, and simple ballots without any requirement to tender bonds should be sent to all the bondholders of all the classes to allow them to vote easily and freely. This is the common practice in bankruptcy. And before the new ballots are sent out, the Disclosure Statement,

and any summary accompanying the ballots should be updated with new information about the actual debt service on the variable rate GO Bond and its impact on the following challenge to the validity of the 2014 GO bonds.

In FOMB's docket 4784, which was publicly available on Prime Clerk as of January 2019, the FOMB challenged the validity of the 2014 GO bond as being issued in excess to the 15 percent debt service limit of the Puerto Rico Constitution. The docket 4784 provided mathematical calculations that purportedly prove this.

For these calculations, the FOMB contended their total debt service should be calculated without interest capitalization, as used in the offering statement of 2014 GO Bonds. And without the interest capitalization, the total service was reportedly 15.1 percent in fiscal year 2016.

However, to reach the 15.1 percent debt service, the FOMB included in their calculation the debt service and other variable rate GO Bonds at 12 percent interest, which was the maximum interest allowed under the Puerto Rico law, and was used in the offering statement in 2014 as a worst case analysis for future years' interest on the variable rate bonds.

At 12 percent, the interest on the variable rate bonds would be 15.2 million dollars. However, the actual average interest on the variable rate bonds was only 1.7

percent, or 2.2 million dollars. So the worst case analysis calculation in 2014 was 13 million dollars too high, and for fiscal year 2016. But the 13 million dollars was subtracted from the total debt service in fiscal year 2016. The total actual debt service was only 14.94 percent. Even if interest capitalization is not removed in the debt service calculation, the actual debt service could go lower without the listed interest capitalization of the offering statement.

The fact that the debt service could have exceeded the constitutional debt service limit in fiscal year '16, based on possible higher interest rates and variable rate GO Bonds, and without interest capitalization, does not change the fact that it did not exceed the constitutional debt service limit for fiscal year 2016, which was determinative of the issue of validity.

In docket 4784, the FOMB also challenged the validity of the 2014 GO Bond, as allegedly being used to pay operating expenses of Puerto Rico, allegedly in violation of Puerto Rico's Constitution, because proceeds from the sale of the 2014 GO Bond were used to repay other outstanding bonds, allegedly used to pay operating expenses of Puerto Rico. However, the Puerto Rico Constitution does not prohibit use of bond proceeds to pay operating expenses, and, in fact, expressly permits deficit spending under Article II, Section 6, which states, the appropriations made for any fiscal year

shall not exceed (Remarks in Spanish), which means total resources, which is in the translation. In the process of drafting the Puerto Rico Constitution, one of the persons asked about the meaning of (Remarks in Spanish.) The person that was drafting responded that the draft intentionally replaced the term "total revenues" with the broader term "total resources", to specifically include the resources that are generated by issuing bonds. See in the Journal of Constitutional Convention at page 1090, and there's a certified translation available at docket 475-26.

After the official Spanish text was approved, an English translation of the Puerto Rico Constitution incorrectly substituted a narrower term, "total revenues". Therefore, this challenge by the FOMB to the validity of the 2014 GO Bonds is frivolous.

FOMB docket 474 also challenged the contrary -- also argued that contrary to the offering statements of the PBA Bonds, the PBA Bonds are really GO Bonds in disguise, and their debt service should be added to the debt service calculations to the 2012 Series A and B GO Bonds and the 2014 GO Bonds.

However, Puerto Rico and its lawyers and accountants certified the offering statement to the PBA Bond as not being general obligations of Puerto Rico, because the PBA Bond -- because the PBA owned extensive real estate, and that the PBA

would pay its debt service, and Puerto Rico was merely a guarantor of those bonds.

Therefore, this challenge by the FOMB to the validity of the 2012 Series A and B Bond, with 2014 GO Bonds is weak. The Disclosure Statement stated that the Plan would settle all challenges to the validity of all the GO Bonds. Therefore, the amount of reduction of the 2014 GO bonds in the Plan was placed with all the bona fide challenges by the FOMB -- all the challenges submitted by the FOMB to the validity of the 2014 GO Bonds, but with the new information about the actual debt service and the variable rate GO Bonds, this challenge to the validity of the 2014 GO Bonds as exceeding the constitutional debt service limit without interest capitalization has been debunked.

The 2014 GO bondholders who negotiated the recovery under the Plan, and the yes voters in retail Class 47 and nonretail Class 46 did not have this new information when they negotiated and voted yes. And with this new information, the associated challenge to the validity of the 2014 GO Bond would have been disregarded. Not surprising, the Plan would have offered a greater recovery to the 2014 GO Bond, because there would have been one less challenge on the table to the validity of the GO Bond -- 2014 GO Bond.

Now, it was the strongest challenge of the three, without the new information about the actual debt service and

the variability rate GO bonds in 2016. Hearing now the ability of Puerto Rico to pay all the GO bonds, and having proven this with established facts and data, and the FOMB has not countered this except with conclusory statements that it cannot pay, and general references to natural disasters, to which the Federal Government provided tens of billions of dollars in relief to Puerto Rico, and the financial result of which is reflected in Peter Hein's facts and data -- the conclusory statement that Puerto Rico cannot stand in the face of these contrary facts as stated. See *Celotex v. Catrett*, 477 U.S. 317.

For the foregoing reasons, the Plan is not in the best interest of bondholders as required by PROMESA 314(b)(6), certainly not in the best interest of the 2014 GO bondholders, which are the largest group in dollar amount. And the Plan should not be confirmed.

It is likely that many bondholders voted for the plan, because with the unconscionable four and a half year delay and lack of interest in pendency of the Plan, lack of comparison of recovery under the Plan to greater action of recovery to court action outside of bankruptcy. If some bondholders of any type of GO bonds still want to settle with the FOMB outside of Title III, there is nothing stopping them from doing so on their own. So let the rest of the bondholders seek greater recovery under the law, including the

possibility that Puerto Rico improperly issued the 2014 GO Bonds while it was considering bankruptcy.

I requested that Puerto Rico provide any documents of this type during discovery, but Puerto Rico adamantly refused to comply. This speaks for itself.

I have requested to reserve any remaining time for sur-rebuttal.

THE COURT: If you wish to stop speaking now, you can, and if you wish to apply for permission for sur-rebuttal afterward, I will hear an application then. Thank you, Mr. Samodovitz.

The next scheduled speaker is Mr. Barrios-Ramos for AMPR.

MR. BARRIOS-RAMOS: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. BARRIOS-RAMOS: For the record, Attorney Jose Luis Barrios in the representation of Asociacion de Maestros de Puerto Rico and its Local Sindical, the exclusive representative of teachers in Puerto Rico.

Your Honor, at the outset of our closing arguments, we would like to address a significant point regarding the active TRS participant claim, and the teachers' damages claims, which are in response to the presentation that the Board made earlier today at its closing arguments, Your Honor.

The proposed Plan proposes a freeze of the defined

benefit components of the Puerto Rico Teachers Retirement Systems, and it's not only a freeze, but of their defined contribution, Your Honor, as Mr. Bienenstock claimed. But if we look at the Disclosure Statement, in Exhibit H at page 274, and as Exhibit F-1 of the Plan of Adjustment, it's also a delay in retirement up to three years that all those teachers, upon the effective date, are not eligible to retire. So the component is not only a freeze to the right to accrue defined benefits, but it's also a modification on the allowance or the time where they will have a right to receive a pension benefit.

The Board states in the Disclosure Statement that the freeze will result in significant savings to the Commonwealth, and will play a significant role in restoring long-term adequate funding. That is, the Disclosure Statement, Exhibit H, at page 275, and the declaration of Ms. Levy, the Board argues, initials some of 4.7 billion, and then with the offset of the Social Security savings, around 3.9 billion over 30 years.

The Disclosure Statement also includes a recovery analysis for each class of claimant, but, notably, does not include the impact that the freeze will have on the teachers' retirement claims or the teachers' recoveries on the proposed Plan. That is at the Disclosure Statement, Your Honor, at page 22, footnote 53.

The Disclosure Statement in particular -- the Board estimates the following recovery for active teachers. Active TRS participant claims, Class 51-I, average monthly total retirement benefit of 843 dollars, and the Board claims a recovery of -- 99.5 percent recovery. But importantly, Your Honor, at footnote 53 of the Disclosure Statement, the Board states, and this hasn't been changed, that the claim estimates do not include the impact of the freeze of the JRS and the TRS pension system or the elimination of any COLA under the Plan.

Pursuant to the proposed Plan, active TRS members will receive their pensioning as follows, the monthly benefits upon retirement will no longer be subject to the monthly benefit reduction, and benefits will be frozen as of the effective date, so that teachers will no longer be able to accrue pension benefits after such date. The right to receive a pension benefit will be delayed to age 63. And there will be no minimum monthly pension disability benefit or minimum benefit, among other measures exposed by Exhibit F, Your Honor.

The treatment that the Board proposes, and the Eighth Modified Proposed Plan of Adjustment states, that teachers' ongoing pension benefits would only accrue through their own contribution to self-funded, individual defined contribution accounts, which have yet to be established for those teachers currently in the defined plan.

In addition, pursuant to the proposed Plan, teachers under age 45, and those older, who choose to do so, will be for the first time enrolled in Social Security, although the timeline for when teachers will be able to participate in Social Security is also not yet established.

Of particular importance, Your Honor, the freeze is the largest component of the active teachers' claim, which pursuant to the Board, will achieve savings of around 3.9 billion dollars. Assuming those benefits are half contributions by the Commonwealth, and half contributions by the teachers, we're talking about a claim that could be in the size of 1.7 billion dollars.

As Mr. Bienenstock referred earlier in their closing arguments, that could affect feasibility of the Plan. At one point, and why we decided to bring this at the outset of our closing arguments, Your Honor, is that in arguing on the theme of the rejection issue, Mr. Bienenstock advanced in an earlier confirmation hearing for the first time, since that is not in the Plan of Adjustment, the Fiscal Plans, of the Disclosure Statement, that the fact that teachers have no alleged damage claim was because teachers had no promise of employment; and, therefore, it is fair to infer a pension benefit and provide no damage claim recovery.

But, Your Honor, that assumption is wrong. Under Puerto Rico law, most teachers, if not all teachers that have

accrued benefits under the TRS pension system, have achieved permanent status within the Department of Education, just like other employees have this permanent status in whatever positions they hold within the Commonwealth. And the court had stated, Supreme Court of Puerto Rico stated that that permanent status gives teachers a proprietary right over their position.

In particular, the Court held in *Pierson Muller I v. Feijoo*, 106 D.P.R. 838 (1978), that in Puerto Rico, a public employee has a recognized interest in the retention of its employment when such interest is protected under the law. And that interest is also protected by an expectancy of continuity. And I'm translating, Your Honor, from the language, the Spanish language of this case.

The case of teachers, Your Honor, it's a proprietary right of teachers upon achieving permanent status as an employee of the Department of Education, codifying Act 312 of May 15 of 1938, 18 L.P.R.A., Section 214, as amended. Thus, the Board rejection of arguments and denial of an alleged damage claim is based on a wrong assumption that was raised, as I mentioned, for the first time in the Confirmation Hearing.

The assumption in question is, under Puerto Rico law, teachers have no expectancy to employment, thus, the damage claim. That may be true in other jurisdictions, Your Honor,

but not in Puerto Rico. And the Board cannot now at this stage argue that PROMESA preempts this particular law, because, as a matter of fact, it doesn't.

Even the Fiscal Plan doesn't contemplate this. In fact, no laws enacted after the filing of the Title III petition deprived teachers of this proprietary right provided by Act 312.

If we look at the latest fiscal plan, it's devoid of any language of layoff of teachers, given the already high attrition rate in the Department of Education and lack of new teachers entering the system. Therefore, that argument that sometimes we believe is circular, that the Board states that, you know, laws are preempted as long as they're inconsistent with the fiscal plan, would not be applicable here, Your Honor. That law is also, to the best of our knowledge, not included in Exhibit K. And, thus, every permanent teacher has not only an expectation, but a proprietary right to its job position, which the case law has held the Commonwealth cannot impair without due process.

Under the law, that due process is provided to teachers under administrative proceedings, Your Honor. I want to make that clear, because that definitely contradicts the statements of no expectation of work, Your Honor. The Puerto Rico law of the Commonwealth cannot impair that right to a teacher's position without due process, because the right to

that position is not only a contractual right, but a proprietary right, and also an acquired right. That cannot be retroactively impaired.

For most teachers under TRS, active teachers, that status of permanent teacher was achieved well before the filing of the Title -- the petition. Thus, an acquired right was matured before the filing of these proceedings. And as Your Honor has recognized, and other courts have recognized, there is a clear difference between the impairment of a contractual right under bankruptcy law and impairment of a property right under bankruptcy law.

And what are those recoveries for that particular credit? That was also discussed in another context on the Takings Clause earlier in this hearing. Thus, since the arguments of no expectation of work is in opposite to Puerto Rico's permanent status of teachers over their positions of employment, or may not be able to push under their argument that there is no damages claim for teachers, because of the expectation of work. And, if the Board is correct, that this contract is capable of rejection, it still needs to meet the standard to reject.

And following such a rejection, the teachers plainly have a legal right to assert a claim for rejection damages. The Plan provides damages in section 76.6, and specifically for teachers, as active TRS participants, in section 55.9(b).

The teachers plainly have a right to submit a claim for rejection of damages, as they do have an expectation of employment and a property right over that position. And the Board's argument of no expectation cannot preclude or disallow such claim under the law.

We have also, AMPR has also advanced that since the defined benefit right of teachers was codified under Law 106, a post petition law, teachers would be entitled to an administrative claim on the damages, but even if the Court were to determine that that claim is not administrative in nature, the teachers' rejection damages claim still has to be paid when allowed. And there is no mechanism in the Plan for doing so.

And despite Mr. Bienenstock's comments regarding the Social Security treatment, and the Plan's statements of further consideration as to the defined contribution account, which is solely funded by funds of the teachers, the Commonwealth will not contribute or match any contribution of teachers. AMPR reiterates its position that teachers are getting nothing under the Plan. Yes, some teachers may not be eligible for Social Security under Exhibit F-1 proposed treatment after the freeze, but not all, Your Honor. And even those who are eligible will certainly not be enrolled immediately upon the effective date.

The Plan doesn't state how long those teachers have

to wait before they are enrolled, and how long teachers will have to wait before they're enrolled even in their defined contribution plan, which is supposed to replace, in part, their current plan. There is nothing in the Plan to implement this process that Mr. Bienenstock called the nitty gritty, even though the teachers' right will be probably impacted upon the effective date.

Which, Your Honor, brings us to our second point, which is a point of contention that AMPR has with the statements of the Board, that ERS are being treated better than other creditors. We do agree, Your Honor, and we do support the Board's agreement with the Court and the legislature to treat retirees and to provide adequate treatment for them, but that is not the case of active teachers, Your Honor, who will be impacted by this plan.

Which brings us to two statements plan supporters made earlier in this hearing, AAFAF and the Retiree Committee, which argued that the Plan may provide better treatment for pensions to other creditors, justifiably so, and we agree with those statements, Your Honor. The Retiree Committee provided the declaration of Mr. Johnson in support of those statements and treatment under the Plan, and which -- Mr. Johnson testified that when the ERS freeze was imposed, some participants received a 44 percent reduction on their benefit. That particular freeze, Your Honor, although not identical, is

very similar to the TRS freeze that is being proposed under Exhibit F-1.

So active teachers will likely receive a reduction on their future benefit that would be comparable to 44 percent, Your Honor, and this reduction will be in addition to all the prepetition reductions that teachers have already experienced, and those post petition reductions the teachers experienced as argued by AAFAF at docket 19319, at page 13, in arguing against the proposed preemption of Act 82 by the Oversight Board. AAFAF argued that pension benefit reductions disproportionately affect Puerto Rico teachers. Given their low salaries, any additional reductions in pension benefits could render teacher retirees unable to pay for basic life necessities, thereby increasing the future cost of Puerto Rico welfare programs.

This, Your Honor, is a reality that I believe has been crystallized in many arguments, not only AMPR. And AAFAF argues this particular point, and highlights that, as recent as 2017, the legislature enacted Act 26, which implemented several measures that affected teachers who were close to retiring, such as an eliminated payment on account of unused sick leave in excess of statutory limits.

AAFAF further argued that such benefit is fair, and specifically, thus, right by teachers who are close to retirement age, and for future years of unused accrued

benefits. So if we take into account the proposed freezing back of approximately 30 to 44 percent, the highlighted impact of Act 26, a post petition measure on teachers, and we take into account all the prepetition reductions, and elimination of benefits, which AMPR lists on its Master Union Claim No. 108230, Your Honor, that would closely resemble what Ms. Levy's declaration states, that some employees of the Commonwealth have experienced reductions from 40 to 82 percent of their proposed -- or what would have been their compensation.

And, Your Honor, that brings me back to a statement that this Honorable Court issued on May 17, 2017, on the first day's hearing. At that time, the Court expressed in opening remarks, and we quote, "what we must do here together is work in good faith to identify and implement the changes that are necessary to enable Puerto Rico to emerge as a stronger place than it is today. One that is providing quality education for its future leaders, retaining talented people who can contribute to Puerto Rico's future, building a vibrant economy, and maintaining public safety; and by doing so, producing economic growth that will provide increasing value for creditors and appropriate support for the retirements of those who have spent their working lives in Puerto Rico's service." See the transcript of the May 17 hearing, at page 7, lines 7 to 16 of the transcript, Your Honor.

AMPR cannot agree more with the Court's statements at that time, which are as relevant today as they were on that day, and AMPR presses that to achieve that goal, the TRS freeze must not be included in the POA. There is no better example of this than considering the plight of Puerto Rico teachers. The freeze not only harms -- will not only harm the teachers, who will be driven into poverty in retirement -- AMPR is not the only one to argue this, Your Honor, before this Court -- but it also affects the students who will no longer have competent educators, as many will leave the system. And, thus, it does not allow or it will not allow Puerto Rico and its people to continue as a vibrant society.

As to whether the POA, as proposed, will further that goal set by the Court on May 17, or proposed by the Court on May 17, Your Honor, you already heard from one teacher at the hearing held on November 9, who said that she could not afford to continue to teach without the defined benefits which have been promised to her. And when -- she meant promised to her, Your Honor. Those benefits were truly promised. There was an inducement to take the position of a teacher, and in exchange, and in consideration for a lower salary, the Commonwealth promised a lifetime pension, a secured, dignified retirement. And many teachers will state --

(Sound played.)

MR. BARRIOS-RAMOS: Your Honor, another speaker that

same day spoke about her mother, a former teacher now in retirement, who is forced to choose between medicine and food at times. There is plenty of data, Your Honor, when food insecurity affects a population, we see health issues more recurrent, and shorter life expectancies.

Your Honor, we would like to further address and close with a statement from the president of the AMPR. I will read it in Spanish, and then summarize it in English. And this message was to the Court and all participants in this case. (Remarks in Spanish.)

(Sound played.)

THE COURT: Can you proceed to the English summary?

MR. BARRIOS-RAMOS: Yes, Your Honor. I'll best translate.

We request for the participants to look at the reality of the teacher, their current situation, how they live, how they have sacrificed, following their vocation, which is to educate this country without taking or being detracted by the many challenges that they have to -- to affront. We request the parties evaluate the significance of the education for Puerto Rico. Teachers are the providers of the education.

If the Plan is approved as it is, we will be -- teachers will be taken to a precarious life, almost to homelessness. After 30 years of sacrifice, love, commitment,

and loyalty to education, teachers will be taking nothing into retirement. Many of these teachers, when they first began in this profession, what they knew they have secured was their retirement.

THE COURT: Thank you, Mr. Barrios, and thank you for your translation of the statement.

MR. BARRIOS-RAMOS: Thank you, Your Honor.

THE COURT: At this point, we will take the ten-minute afternoon break. So we will resume at five minutes to 3:00 New York time, which will be five minutes to 4:00 Atlantic Standard Time.

(At 3:41 PM, recess taken.)

(At 3:55 PM, proceedings reconvened.)

THE COURT: Good afternoon again, everyone. We will now continue with the statements of the objectors.

The next speaker is Mr. DeChiara for SEIU and UAW, who's been allotted ten minutes. Good afternoon, sir.

MR. DECHIARA: Thank you. Good afternoon, Your Honor. Peter DeChiara from the lawfirm of Cohen, Weiss & Simon, LLP, for UAW and SEIU.

As the Court knows, UAW and SEIU objected to language in paragraph 62 of the proposed Confirmation Order, language that imposed ten years restrictions on the Commonwealth given even modest increases in the defined benefit pension payments for ERS participants. We argue that inclusion of that

language, which first appeared in the Confirmation Order on November 7th, violates the due process rights of ERS participants, because the Oversight Board never served them with a proposed Confirmation Order containing that language or otherwise gave them notice of the language and a chance to object to it.

The revised Plan of Adjustment that the Oversight Board filed last night added at section 83.4 of the Plan the same language that we objected to in paragraph 62 of the proposed Confirmation Order. Since it was only filed last night, UAW and SEIU have not had a chance to prepare a written objection to section 83.4, and we reserve our right to submit one. But I want to, in this closing, at least outline the basis of our objection.

Our core objection is due process, the Oversight Board violated due process rights of ERS participants by seeking Court approval of language in paragraph 62 of the Confirmation Order which would materially and adversely affect them, but without serving them with notice of the proposed language, and, thus, denying an opportunity to object.

The Oversight Board cannot cure that due process violation simply by adding the same language to the proposed Plan of Adjustment. The due process violation remains the same. The Board is asking the Court approve language adverse to ERS participants, without giving them notice and a chance

to object to it.

The Supreme Court has held that due process requires that notice be reasonably calculated to afford interested parties an opportunity to object. And I would cite *Mullane v. Central Hanover Bank*, 339 U.S. 306, 314, for that proposition.

In the bankruptcy context, the question is what notice the Plan proponents provided the effected parties. *In re Puchi Properties*, 601 B.R. 677, 684.

It is irrelevant that ERS participants may have heard that there's a reorganization proceeding going on, or even, more specifically, that they may have heard that a confirmation hearing is taking place. Parties at interest do not have an affirmative duty to investigate whether their interests may be affected by court proceedings. The burden rests on the Plan proponent to provide adequate notice, and for that proposition, I again cite the *Puchi* case.

The Oversight Board pointed out PROMESA section 313 allows it to modify the Plan at any time before confirmation, but that statutory provision does not and cannot trump the constitutional provision for due process. In other words, the Oversight Board may have a statutory right to revise the Plan, but it would, nonetheless, violate the constitutional right to due process for the Court to approve the revised plan without the effected parties being given notice and a chance to object.

Last minute changes to a plan in a reorganization case typically do not raise due process issues, because they are consensual or technical in nature. The language in section 83.4 is neither. It is significant, and it is adverse to the ERS participants. And the Board is trying to slip it through, just as the Confirmation Hearing comes to its close, because inclusion of the language in the Plan and, for that matter, in the Confirmation Order violates due process. The Court should strike it.

So what process would be due ERS participants were the language left in the Plan? In its motion requesting the Act 53 findings, the Oversight Board took the position that service by publication in newspapers was sufficient for ERS participants, because it claimed the Act 53 findings did not directly affect the ERS participants. The language at issue here, indisputably affects ERS participants, and, therefore, requires service designed to actually reach them, namely, service by mail, or other direct means.

Moreover, as the First Circuit has held in the bankruptcy context, as elsewhere, due process requires "a meaningful opportunity to prepare and be heard." *In re Hoover*, 828 F.3d 5, at page 9.

Here, a meaningful opportunity to prepare and be heard means adequate time for ERS participants to consult with and potentially retain counsel, and to have counsel prepare an

objection. That doesn't happen overnight, or even in a few days. ERS participants are not bankruptcy professionals, but working people and retirees. They need adequate time to grasp the issues and seek out legal advice.

Your Honor, we are not looking to derail the confirmation process. The best way to avoid this due process problem is for the Board to remove the language, or for the Court to strike it.

Now, due process is not the only basis for an objection to this new plan language. One class of ERS participants, the below threshold ERS retirees in Class 51-A, had no opportunity to vote on the Plan in its earlier iteration. That class was deemed to accept the Plan, because the monthly benefit modification did not affect them, so they were considered unimpaired.

Now, however, the new Plan language added last night restricts their right to a pension increase if the Commonwealth were to decide to grant them one. That restriction is clearly adverse and material, yet the members of Class 51-A have had no chance to vote on the Plan as modified.

I would note UAW and SEIU are not alone objecting to the language that now appears in section 83.4 and paragraph 62 of the proposed Confirmation Order. In docket 19320, filed over the weekend, AAFAF wrote that the paragraph 62 language

"impermissibly restricts the Government's sovereignty."

We agree the Board is an oversight board, not a control board, and its powers are limited. It does not have the power to deprive the Commonwealth of the power to legislate. This is not a question of preemption of existing legislation. Paragraph 62 would bar legislation that does not yet exist. Contrary to the Oversight Board's assertion, the paragraph 62 language is not necessary to protect the Commonwealth's finances. PROMESA already gives the Oversight Board adequate tools to use if the Commonwealth enacts legislation that the Oversight Board believes would authorize spending in excess of that allowed by the fiscal plan or budget, go to PROMESA sections 108 and 204. The Oversight Board has not been shy in the past about using those mechanisms, and it has used them successfully. So section 83.4/paragraph 62 restrictions is not needed and is an overreach.

Before leaving this topic, let me mention that section 83.4/paragraph 62 language is not about "restoring" defined benefit plans. That's a misnomer. For pre 2000 ERS participants, those defined pension benefits exist and will continue to exist. The language restricts any increase in those existing benefits, even modest ones.

In the newly revised plan filed last night, the Oversight Board added Act 80 to the list of the statutes it

deemed preempted. UAW and SEIU have not had adequate time to study that issue, since it was only added to the Plan last night, so we will simply reserve all of our rights concerning that issue.

The revised Confirmation Order filed last night also addresses certain of UAW and SEIU's other objections, including those concerning treatment of union grievances. I have not had a chance to review it with my client, and we reserve all rights regarding whether they adequately address our concerns.

Finally, SEIU continues to object on feasibility grounds, because the Plan is simply too generous to bondholder creditors, and leaves the Commonwealth with too great a debt burden. And that concludes my closing remarks, unless the Court has questions. Thank you.

THE COURT: Thank you, Mr. DeChiara.

The next speaker is Mr. Fuentes, for Maruz, who has been alotted ten minutes.

MR. FUENTES-HERNANDEZ: Yes. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. FUENTES-HERNANDEZ: Your Honor, before I commence, brother counsel Charles Cuprill, who represents another takings claim, Asociacion Pastor Mandry Mercado, is having a procedure in the Mayo clinic, in the mainland, and he

sent me his written position. He is scheduled to talk later on. I don't know if you want me to -- because I'm not going to take the full ten minutes that I have, so I don't know if you want me to commence with his position, or whenever his turn is, then you will call me and I will speak on his behalf?

THE COURT: You can do both at this time.

MR. FUENTES-HERNANDEZ: Very well.

THE COURT: So you can start with his if you like.

MR. FUENTES-HERNANDEZ: Very well.

THE COURT: I am very sorry to hear that he is under medical care, and please extend everyone's good wishes for a good outcome and good recovery to him, please.

MR. FUENTES-HERNANDEZ: I will, Your Honor.

So, again, this will be the position of Asociacion Pastor Mandry Mercado that Mr. Charles Cuprill, Esq., sent me the position in writing. So I'm going to read it, Your Honor, as he sent it to me.

Sucesion Pastor Mandry Mercado is not challenging the constitutionality of PROMESA or the Bankruptcy Code. What Sucesion is challenging is the Plan of Adjustment of the Oversight Board, which ignores Sucesion's claim no. 6272, for $30,496,000, plus interest, as of August 9, 2008, until the full payment and costs arising under the Takings Clause for the inverse condemnation of its properties as decided by the Court of First Instance of Puerto Rico, on succession and

affirmed by Puerto Rico's Court of Appeals.

By classifying direct condemnation proceedings in Class 54 with an improper treatment, the Plan ignores claims arising from inverse condemnation proceedings in violation of section 1122(a) of the Bankruptcy Code. It must be underscored that Sucesion's claim has not been objected to by the Oversight Board, and consequently is deemed allowed pursuant to section 502(a) of the Bankruptcy Code.

There is no basis for separately reclassifying claims arising from inverse condemnation from those arising from direct condemnation, as both are prepetition claims, and the funds deposited as to the later by the Commonwealth belong to the corresponding claimants under Puerto Rico law, and are not part of the Commonwealth's estate. Therefore, it is a misconception on the part of the Oversight Board to attempt to create a difference between them based on that prepetition payment.

Both types of claims arise from condemnation proceedings by the Commonwealth under the Fifth Amendment Takings Clause, and are subject to full compensation, as finally adjudicated by Puerto Rico's judicial system under full faith and credit principles.

In the case of Sucesion, the Commonwealth has recently appealed the judgment of the Court of Appeals of Puerto Rico to the Puerto Rico Supreme Court, warranting that

until the decision of the Supreme Court, the amount of Sucesion's allowed claim be reserved under the Plan.

Without differentiating between inverse condemnation proceedings and direct condemnation proceedings, the Supreme Court in *Knick* stated "the Fifth Amendment right to full compensation arises at the time of the taking, regardless of the post-taking remedies that may be available to the property owner." It is Sucesion's position that all eminent domain claims as finally determined must be equally dealt with and paid in full under the Plan.

To argue that, as in *Blanchette*, a case decided in reference to the Rail Act, Sucesion will have a monetary remedy under the Tucker Act before the Federal Court of Claims is ill founded, as Sucesion chose to litigate its claim before the Courts of the Commonwealth. What *Knick* holds in reference to claims arising under the Takings Clause is that property owners suffering a violation of their Fifth Amendment rights when the government takes their property without just compensation, as in *Knick*, may bring their claims in Federal Court under 48 U.S.C., Section 1983 at that time, without having to first exhaust state remedies and having a state court deny their claims for just compensation, and, as a result, being barred from their federal claims, recognizing that a state court resolution of a claim for just compensation under state law generally has preclusive effect in any

subsequent federal suit under a full faith and credit statute, 28 U.S.C. § 1738.

That is Sucesion Pastor Mandry Mercado's position, Your Honor.

THE COURT: Thank you.

MR. FUENTES-HERNANDEZ: So now I will move to my client, which is Maruz Real Estate.

THE COURT: Thank you.

MR. FUENTES-HERNANDEZ: Your Honor, we will try to be as short as possible, first of all, because after reading the Order that Your Honor issued at docket 19308, we understand that Your Honor is clear as to the issues that are affecting our client, and obvious -- and also because of the comments that Your Honor made this morning.

But the three issues that we wanted to discuss, and I think that those were issues that can be ascertained from the ones that Your Honor listed in the Order at docket 19308, are basically that the claims for inverse condemnation are nondischargeable, that they are improper -- they were not classified properly, and that there is a lack of good faith by the debtor in filing this Plan.

As to the nondischargeability, Your Honor, and I'm going to be quick, because I think that Your Honor really knows the issue very well, but section three of PROMESA, basically, which is the supremacy clause, clearly states, and

obviously it has to be like that, because it cannot be -- it cannot go against the Constitution, it clearly states that a supremacy -- that PROMESA shall prevail over general and specific provisions of territory law, state law, or regulations that are inconsistent with PROMESA.

Obviously it does not trump the Constitution. It cannot go against what the Constitution dictates. Therefore, as just compensation for either Takings Clause or reverse condemnation, which the Supreme Court in *Knick* has stated it's one in the same, must be paid in full in this Plan.

I also want to make a brief -- you know, differentiate the cases that the Board is reliant upon. First, you know, in the case of *Stockton*, that case, that claimant had already received just compensation in a direct takings claim. What he did is that then, after taking the money out of the court, whereby, based upon the local law there he relinquished any other claim that he had, in order for him to get more money, then he proceeded to file a second and a separate inverse condemnation complaint.

In there, and based upon those specific facts, it's that the Court decided that that second lawsuit, then it could be deemed as an unsecured claim, because it was a claim that was filed after he had already took the just compensation that was paid to him under the direct takings case. So that's completely different from what we have in here, where we have

direct inverse condemnation claims, where not a penny has been paid to the claimants.

Now, the other case that they are citing now, or at least trying to for this Court to follow, is *Poinsett Lumber*. And in that case, again, that case, it was a particular claim by a particular claimant that said that there was a flooding that caused damages to his property. In that case in particular, he was not requesting that the Court deem all inverse condemnation claims to be nondischargeable. He was requesting his claim to be paid in full, and in there, the Court went into that claim in particular and decided, since it wasn't a taking as such, that it was just a damage claim, because he suffered damages because of a flooding. So that's completely distinguishable from what we have here.

Now, the second issue -- so that's as to the nondischargeability. We understand that, based upon the Constitution, any claims for takings or inverse condemnation has to be paid in full, and it has to say that in the Plan.

Then we go as to the improper classification. Your Honor raised this issue, issue no. two in the Order, docket 19308, as to if the inverse condemnation claims are included in Class 54. The Board stated this morning that, no, that, actually, they included them as a general unsecured. So, again, our position is that all -- we are not in the same boat as the general unsecured.

The inverse condemnation claims have a constitutional right to be paid in full, and that has to be included in a separate class. If we are included in the same class, which is Class 54, as to the direct takings claims, then the treatment has to also be changed in order for all claims, either direct takings or inverse condemnations, to be paid in full whenever the local courts issue a judgment that is final and unappealable, stating what the just compensation is.

So even if, in the direct takings claims, what they're saying is they can only take what is deposited in court, if there's anything, and the rest will be an unsecured claim, that's also wrong. It has to be just compensation, as decided by the local courts, has to be paid in full for either the direct takings claims or the inverse condemnation. So the treatment has to change, and obviously the classification of the inverse condemnation has to be either in the same boat as the takings claim or in a claim on its own, but they all must be paid in full.

And then the third issue that we would raise was the lack of good faith, and, again, this, we've got to underscore the fact that when Your Honor made inquiries as to, well, what would happen if a municipality or someone starts, you know, doing a lot of takings, or as to a lot of properties, and then files for bankruptcy in order to not pay them in full, and the Board's attorney basically said, well, you know, they will

have the bad faith argument in order to dismiss the bankruptcy, well, Title III, section 301 of PROMESA incorporates 1129(a)(3), which is that the Plan has to be submitted in good faith.

So the bad faith argument does not only apply when a bankruptcy is filed. It applies when the Plan is submitted and filed. So now they are lacking good faith when they are not only including the inverse condemnation in a separate class as to the takings claims, but including that as a general unsecured claim.

So we understand, Your Honor, that in order for them to -- and, furthermore, they have never, even though they have said in other -- with other claimants that they have sat down and tried to negotiate, with us there has been no contact whatsoever in order to reach some type of agreement, not even after Your Honor's, you know, issuance of the Order at docket 19308.

So we understand that the Plan, as submitted, has been submitted in bad faith, and that in order to cure that, the claims be either, as a taking or inverse condemnation, has to be paid in full as soon as any one of them gets a judgment that is final and unappealable.

THE COURT: Does that conclude your remarks, Mr. Fuentes?

MR. FUENTES-HERNANDEZ: It does, unless Your Honor

has any other questions.

THE COURT: No. You were quite clear. Thank you, Mr. Fuentes.

MR. FUENTES-HERNANDEZ: Thank you.

THE COURT: The next speaker will be Mr. Carrion-Baralt for PFZ Properties.

MR. CARRION-BARALT: Good afternoon, Your Honor. Can you hear me?

THE COURT: Good afternoon. Yes, I can. Thank you.

MR. CARRION-BARALT: David Carrion-Baralt on behalf of PFZ Properties, Inc.

In light of Your Honor's remarks this morning, we will only reiterate and adopt by reference the arguments presented in our prior written briefs. PFZ understands that the Board's surprising new arguments raised today are facially inapplicable to PFZ's claim.

The main evidentiary issue, the feasibility of the Plan if certain eminent domain claims were to be deemed nondischargeable, has been solved by the Board's admission that there is money to pay for them. So subject to Your Honor's questions, those would be my remarks.

THE COURT: Thank you, Mr. Carrion-Baralt. I don't have questions for you.

So now we will hear from counsel for Amador, Ms. Figueroa y Morgade.

MS. FIGUEROA Y MORGADE: Yes, Your Honor. Can you hear me?

THE COURT: Yes, I can. Thank you. I can hear you, but I can't see you.

MS. FIGUEROA Y MORGADE: Let me check my camera.

THE COURT: I see you now.

MS. FIGUEROA Y MORGADE: Okay. Great. Thank you.

Good afternoon, Your Honor, and to the staff at the Puerto Rico and New York courtrooms. This is Attorney Maria Mercedes Figueroa y Morgade on behalf of Demetrio Amador, Inc.

Amador's arguments this afternoon reinstate its objection to the confirmation of the Eighth Amended Title III Joint Plan of Adjustment, and from here on, we will refer to that Plan as the current proposed Plan. This current proposed Plan has a fracture. It has a legal fracture that ignores the Fifth Amendment of the U.S. Constitution, and the corresponding provision of the Puerto Rico Constitution.

In order to promote fixing this fracture, Amador will also address the Court on executing its discretionary powers under section 941 -- 944(c)(1) of the Bankruptcy Code, as applicable to PROMESA. These Title III proceedings are not a panacea that requires creditors under the Takings Clause, as Amador and others, to conform to the Plan proposed by the Board. Amador has objected to the Plan because, as a Takings Clause claimant, its claim cannot be impaired, nor discharged

under the Plan.

Amador prays for this Honorable Court to deny confirmation unless the Board amends the Plan to provide a Takings Clause class that is not impaired, that recognizes that Takings Clause claims are not dischargeable, and proposes to pay the claims in full under the Plan.

During these past weeks, the Court has heard references to Supreme Court case law, and Article I, Section 1 of the U.S. Constitution providing Congress the ability to enact uniform laws on the subject of bankruptcies, but specifically stating that the Fifth Amendment is not abrogated by the Bankruptcy Clause, and that Congress' bankruptcy power is subject to the Fifth Amendment's prohibition against taking private property without just compensation.

Article II, Section 9 of the Constitution has the same provision. No taking of private property unless just compensation is paid. Therefore, both Takings Clauses create an obligation for the Title III Commonwealth debtor to pay the full amount of the just compensation determined by Puerto Rico courts in eminent domain and inverse condemnation proceedings. The proposed Plan of Adjustment does not propose Amador or any Takings Clause claimants the payment they are entitled to receive under the Fifth Amendment obligation.

The Plan seeks to impair, and discharge Amador's claim by failing to provide payment in full of the just

compensation it is entitled to receive under the Takings Clause. Therefore, this Court must decide whether the Commonwealth may impair and discharge a Takings Clause claim to its Plan of Adjustment. The answer is no.

So Amador moves the Court to uphold the Takings Cause claims and deny Plan confirmation unless the Plan is amended. The statutory vehicle to support this request also comes from section 944(c)(1) of the Bankruptcy Code, as applicable to these Title III proceedings, which allows the Court to enter an Order ruling that Takings Clause claims are nondischargeable and cannot be impaired.

We have to go to the *Detroit* case, *Detroit* Chapter 9 case, where Judge Rhodes decided to follow section 944(c)(1). In that case, the Court faced the same Takings Clause controversy, the impairment, and dischargeability of the Takings Clause claimants, and an unconstitutionality attack -- I'm sorry, an unconstitutionality attack on Chapter 9 for various reasons.

The *Detroit* Court executed its discretion under 944(c)(1), and was persuaded to do so by the Attorney General's Opinion filed in the *Detroit* case. The Attorney General suggested the Court use its discretion under section 944(c)(1) by including the nondischargeability of the Takings Clause claims in the Order of Confirmation, instead of addressing the unconstitutionality issues under Chapter 9.

In this case, arguments on the unconstitutionality, I'm sorry, of the provisions of the Bankruptcy Code applicable to PROMESA, the unconstitutionality of the Plan provisions regarding the Takings Clause claimants have been certified to the Attorney General of the United States; but at the end of the day, in this case, after the Attorney General states its position, it will be this Honorable Court, the one to review the unconstitutionality arguments raised in this case. Therefore, Amador moves this Honorable Court to use its discretionary power under section 944(c)(1), and to follow the Supreme Court of the United States' legal maxim on avoiding constitutional questions.

The maxim reads as follows: If a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction origin law, the Court will decide only on the latter. Under this maxim, the Court should decide and use section 944(c)(1).

The language of section 944(c)(1) is very clear, and its plain language leads us to the fact that the Court has judicial discretion to enter an Order confirming a Plan that provides for the payment in full of Takings Clause claims, and also provides for the nondischargeability of these Takings Clause claims, and, most importantly, that -- the Plan provides that the payments are made through the Plan.

Therefore, in order to protect the constitutional obligations of the Commonwealth, to pay just compensation to Takings Clause claimants under the Fifth Amendment and the Puerto Rico Constitution, this Honorable Court should tilt the scales in favor of Amador, a Takings Clause claimant, and the other Takings Clause claimants, deny the confirmation of the Plan with Class 54 and 58, as stated.

Amador does not want to delay the confirmation, so if the Court in the execution of its supervising powers regarding the confirmation requirements decides to confirm the Plan, then Amador prays for the Court to enter an Order that will provide for payment in full of these claims, that these claims are nondischargeable, and cannot be impaired.

That is the position of Amador, Your Honor.

THE COURT: Thank you, Ms. Figueroa y Morgade.

The next speaker is Mr. Capdevila, for Finca Matilde.

MR. CAPDEVILA-DIAZ: Good morning -- good afternoon. I'm sorry. Do you hear me well?

THE COURT: Yes, I can. Thank you.

MR. CAPDEVILA-DIAZ: Okay. For the record, Eduardo Capdevila on behalf of Finca Matilde, Inc.

Your Honor, two weeks ago I averred that the questions before this Court were very straightforward: Can the government be relieved of its constitutional obligation to pay just compensation under the Takings Clause, and can the

Oversight do, through a plan of adjustment, that which the sovereign cannot.

Two weeks ago we submitted that the answer was no. Today, after the evidence was tendered and admitted, the answer is the same. For the last two weeks, and even today, we have heard the Plan proponent argue that the Plan is much needed in view of the local economic situation, devastation caused by Hurricane Maria, political turmoil, and the pandemic; but, Your Honor, the Board just appeals to horror, and moves the Court to confirm a plan arguing that confirmation is the only way to avoid chaos.

To that end, last week the Oversight Board argued that they took no joy in making cuts to creditors or to pensions, but that cuts were -- and adjustments had to be made, because -- I believe the word Mr. Bienenstock used was, this is the law of nature. But we are not in a court of nature. This is a court of law. Bankruptcy and insolvency law is not about survival of the fittest, and confirmation proceedings are certainly not supposed to be a power struggle between the sovereign and its creditors.

The power struggle ended, and it concluded with the Bill of Rights, with adequate protection, our Constitution of the United States of America. The Constitution sets the supreme boundaries of the government's powers as sovereign against its people. Those boundaries were established

precisely to protect the people from the consequence of a government with unlimited power, or the so-called law of nature.

The Takings Clause provides that property cannot be taken without just compensation. This is a court of law that must rule based on the Constitution, the law, and the evidence. It is black letter law that the Plan proponent bears the burden of proof to establish that the Plan meets the requirements for confirmation.

Today, the Board and other Plan supporters have gone over what was submitted, and we will not dwell on that. Rather, we should focus on what the Court did not see. With the respect to the classification of the issue of the inverse -- eminent domain claimants, the Oversight Board alleged that classifying inverse condemnation claims as general unsecured, as opposed as -- as direct eminent domain creditors in Class 54 is reasonable and not arbitrary, because direct condemnation claimants have a lien over the cash deposits in state courts. But according to state law, for creditors in Class 54 to have a security interest over that deposit means that the cash deposited is property of the debtor.

Now, did the evidence show that such money deposited in state court belonged to the debtor? The answer is no. Neither documental, nor the testimonial evidence before this

Court established that such money belonged to the debtor, nor it was taken into consideration in determining whether the Plan complies with the best interest test. If it is property of the debtor, it should have been considered.

The Board wants the Court to infer that such is the case, but arguments are not proof. And from our review of the evidence presented and admitted, no proof was submitted to the Court to make such inference. The money deposited in state court for direct condemnation actions belonged to the condemnee and his creditors. It does not belong to the creditor.

As section 2907 of Title 32 of the Puerto Rico Laws Annotated provides, as soon as the deposit is made, title of the property is conveyed to the condemnor. Therefore, such deposit is not a security interest of the condemnee, but rather the consideration, or just compensation, be it final or partial, for what the government took.

Consequently, all condemnation, be it direct or inverse, constitutes a taking under the Fifth Amendment, and the protections therein granted. There is no legal basis to include inverse condemnation claims as general unsecured claims, that is, separately from direct condemnation claims, and the evidence before this Court does not support the distinction the Board wants to make. Moreover, the Board did not submit evidence, nor allege, that the eminent domain

creditors entered into an agreement that can be impaired under the Contract Clause of the Constitution.

With the Takings Clause of the Constitution -- I'm sorry, with respect to the dischargeability issues, bankruptcy was designed by Congress to provide a fresh start for debtors, but bankruptcy was never meant to be the panacea for financial problems, as Attorney Figueroa y Morgade just said. Yes, we agree with the Board's remarks regarding the hard work and effort this case has been. I mean, I think everyone here and listening can agree that just keeping track with the docket number and the entries was a full-time job.

And, yes, we agree with what Mr. Zouairabani said earlier today, that no plan can be perfect, but neither terror, nor the need for cuts and adjustments are sufficient to confirm a plan. The Plan does not need to be perfect. It needs to be legal. It needs to be constitutional.

It is irrelevant whether the Plan has more supporters than objectors. The relevant question is whether the Plan complies with PROMESA section 314, and whether the Plan is constitutional. Your Honor, it is not. Nothing in the Contract Clause or the Bankruptcy Clause of the Constitution allows the government to take property without paying just compensation.

Today we heard Mr. Bienenstock argue on behalf of the Board that the case of *Block v. North Dakota* provides

additional support for its contention that takings claims can be impaired or dischargeable, but that case, Your Honor, is completely irrelevant to this controversy. Such case merely upheld that Congress may impose a statute of limitations upon parties asserting claims against the government. That has never been an issue in this case. Neither state law, nor the Fifth Amendment imposes a statute of limitations on the condemnees.

Additionally, the subject matter of the *Block* case was the constitutionality of a specific statute. Here, the issue at hand is whether the Board can do that which the sovereign cannot.

So I come back to the place where I started, the two questions that were before the Court. Can the government be relieved of its constitutional obligation to pay just compensation? No, Your Honor. The Fifth Amendment states the exact limitation on the power of the government, and that is to pay just compensation. Neither Puerto Rico, nor the Federal Government can take property without paying just compensation.

It follows that the Oversight Board cannot do through a plan of adjustment that which not even the Federal Government can do, take property without paying just compensation. Therefore, Your Honor, eminent domain creditors --

(Sound played.)

MR. CAPDEVILA-DIAZ: -- whether it's direct or inverse condemnation, cannot be impaired, nor discharged, and they must be paid in full through the Plan of Adjustment. Particularly when earlier today we heard the Board admit that paying all condemnation claims in full on the effective date of the Plan will not break the camel's back. That is, it does not affect feasibility.

In as much there is such sufficient funds, the Plan cannot be confirmed as filed, unless the Court determines under the powers granted by section 944(c) that direct and inverse condemnations are nondischargeable, and must be paid in full as of the effective date of the Plan. Otherwise, the Plan would be unconstitutional.

And to finish, Your Honor, to wrap it up, the Constitution is supreme, and each clause in the Bill of Rights serves a purpose. The Fifth Amendment is a shelter for people against the power of the sovereign. To confirm a plan that allows for impairment and discharge of the government's obligation to pay just compensation would do that which the framers of the Constitution and the framers of the Fifth Amendment sought to eradicate. It would pierce a giant hole in that shelter.

Again, Your Honor, this is a Court of law, and the Constitution is supreme. Thank you.

THE COURT: Thank you, Mr. Capdevila.

MR. CAPDEVILA-DIAZ: And since I have a few seconds left --

THE COURT: Yes.

MR. CAPDEVILA-DIAZ: -- the Court Ordered like corroboration docket entries. I can pinpoint in the reply where the Board made such arguments, which is --

THE COURT: Yes. Please go ahead.

MR. CAPDEVILA-DIAZ: Docket 11 -- I'm sorry, 11874, at page 63, and at docket 18874-3, at page 13.

THE COURT: Thank you.

The next speaker --

MR. CAPDEVILA-DIAZ: Unless the Court --

THE COURT: I'm sorry.

MR. CAPDEVILA-DIAZ: No. Unless the Court has any questions, that's it, Finca Matilde's account.

THE COURT: Thank you, Mr. Capdevila.

So the next speaker is Mr. Carlo-Altieri, from Vaqueria Tres Monjitas.

MR. CARLO-ALTIERI: Yes, Your Honor. I'm trying to start my video. I hope that -- can you hear me?

THE COURT: I can hear you, but I don't see you. Now I see you as well. Hello.

MR. CARLO-ALTIERI: Thank you, Your Honor. It's a pleasure to be before you, and an honor.

I'm not going to bore you with constitutional discussions. They've been very well placed by the prior speakers' counsels, and it's too late in my life to start to learn about the Constitution. But as Your Honor knows, PROMESA is not just about restructuring the debt. It's much more complicated. It's really an avant garde piece of legislation, in that it deals not only with financial affairs, but also with socioeconomic issues that occur when an economy like the Puerto Rico economy fails.

And I thank you for the opportunity to address the issues that may address even the survival of my client, Vaqueria Tres Monjitas, VTM, as we normally call it. This is one of only two milk processing plants serving over three million people in Puerto Rico, with strict price controls, and in private hands, local hands.

Vaqueria Tres Monjitas is an essential part of and one of the only surviving agricultural operations and businesses that still exists in Puerto Rico. As you may be aware, Your Honor, 90 or 95 percent of essential food needs, including milk, are being imported from the -- excluding milk, are being imported from the continental U.S. and other countries, and no country can survive without a viable agriculture. Puerto Rico is not an exception to this, and PROMESA is a survival statute.

Hence, it's clear, the essential nature of this

industry to Puerto Rico's survival and Puerto Rico's economy. It's an industry, also, that serves over 300 farmers, farms, local farms, and represents -- and also has a direct and indirect employment of about 10,000 local employees, which is a good number.

(Sound played.)

MR. CARLO-ALTIERI: At the same time, I want to say that VTM endorses the Eighth Amended Plan, but we want to make sure that if -- because we are in favor of the Plan, we have struck a deal with the Board, but if a special -- if the Plan is changed, to give the eminent domain 100 percent of the claim, we hope and we request that we be treated the same way.

Thank you, Your Honor, and have a good day.

THE COURT: Thank you.

The next speaker is Mr. Gonzalez-Valiente for Suiza Dairy.

MR. GONZALEZ-VALIENTE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. GONZALEZ-VALIENTE: Rafael Gonzalez-Valiente for Godreau Gonzalez Law, in representation of Suiza Dairy.

First, before we start the time, I would ask the Court to indulge me in as much as the Board has raised new arguments today and cited new cases for the first time. And we would like to address those prior to going into our closing argument.

I probably will not go over my time, but if I do, I will ask the Court to indulge me for maybe a minute extra.

THE COURT: Okay. So I'll start your time, and we'll see where we end up.

MR. GONZALEZ-VALIENTE: That's perfect, Your Honor. Thank you very much.

No statute of limitations applies to Suiza Dairy's regulatory claims, so as to that, these are -- the arguments raised today by the FOMB is beyond irrelevant. But as I think I understand what the FOMB is attempting is to make an analogy, between an alleged statute of limitations, or a takings claim, and bankruptcy claim, this without any support whatsoever and contrary to the specific holdings of the Supreme Court in *Security Industrial Bank v. U.S.*, 459 U.S. 70, 77, that holds that the bankruptcy power -- specifically holds that the bankruptcy power is subject to the Fifth Amendment.

So this analogy is simply inapplicable, but this argument was also raised for the first time today in closing arguments, so even if it were correct, which it is not, it was waived by the FOMB and may not be raised at this stage.

Secondly, there is no statute of limitations on the Takings Clause, and the FOMB does not point to any law that imposes such an alleged time limitation or statute, statute of limitations. The Board cites *Block v. North Dakota*, 461 U.S.

273, but for the proposition that the Takings Clause is subject to a statute of limitations, but this is incorrect. What the Supreme Court held in that case was that the Quiet Title Act and law, not the Fifth Amendment, specifically was subject to a statute of limitations.

It specifically stated, and I quote, "the state probably is correct in stating that Congress could not, without making provision for payment of compensation, pass a law depriving the state of land vested in it by the Constitution." That, and section 2409a(f), the Quiet Title Act, does not support to strip -- does not support to strip any state, or anyone else, for that matter, of any property rights. So this holding regarding the statute of limitations is not for the Fifth Amendment at all, but for the Quiet Title Act.

Stone, another case cited by the FOMB, deals with an unconstitutional tax and reimbursement for that tax, not an eminent domain claim. The same goes for *Davis*, which deals with a tax refund, and a due process allegation, because the claimant for reimbursement -- the claim for reimbursement was time barred, and, thus, the plaintiff did not get his day in court. So it was a due process allegation, not a Takings Clause allegation, and there's no fundament in any of those cases to support the FOMB analysis.

Now, we have briefed the rest of this matter as

thoroughly as we have been able, so I would like to take this opportunity just to give a brief history on the Takings Clause, its origin -- and its origin in order to provide perspective and shed additional light on the subject.

THE COURT: May I ask you -- I'm sorry, sir. Mr. Gonzalez-Valiente --

MR. GONZALEZ-VALIENTE: Yes.

THE COURT: -- may I ask you to address a specific question about Suiza Dairy's claim? Can you point me to any judicial determination in your underlying litigation in Puerto Rico, either at the District Court level, or at the appellate level, that expressly describes the regulatory accrual mechanism as just compensation for a taking, rather than as an equitable remedy? Because when we looked at the opinions, we saw references to it as an equitable remedy, and an Order and Judgment providing that the Takings Clause claim was dismissed when the Order and Judgment was entered on November 6, 2013.

So it seemed I will say unclear that there was an adjudication of a Fifth Amendment violation, and an imposition of the regulatory accrual mechanism as a just compensation mechanism.

MR. GONZALEZ-VALIENTE: Well, for starters, Your Honor, a regulatory accrual is only -- can only be a remedy for a regulatory taking, Your Honor. But, and I'm looking for it, because I found it -- I was reading over it last week,

Your Honor. There is a specific holding that there was a regulatory taking in docket 480 of case 04-cv-1840, Your Honor.

THE COURT: We had looked at docket entries 2322 and 2347 in that case, 04-1840, if that helps you.

MR. GONZALEZ-VALIENTE: No. There was -- okay. In page 91 of docket 480, and I'm reading verbatim, the Court finds, as more fully described infra, violations to the Due Process, Equal Protection and the Takings Clause as a pattern of lack of standards, change in standards with the utter -- with unfettered discretion, use of stale figures, lack of an appropriate standard as to a fair rate of return in the regulations set by the regulator -- set by the regulator all pointing to a taking "pursuant" to *Duquesne Light Company*, and *Tenoco Oil*. This Court finds that said criteria has been reached since the two processing plants are losing market and have suffered for the periods from 2003 to 2007 a Due Process and Equal Protection Violation reaching the levels of a "taking".

THE COURT: So what docket entry number was that again?

MR. GONZALEZ-VALIENTE: That's docket entry 480, and I believe it was Exhibit Three of our Objection to the Plan, Your Honor.

THE COURT: That was before the appeal to the First

Circuit; is that correct?

MR. GONZALEZ-VALIENTE: That was upheld in the First Circuit. This was in the initial Opinion and Order issued by Judge Dominguez.

THE COURT: By Judge Dominguez.

MR. GONZALEZ-VALIENTE: Yes.

THE COURT: So I think I looked at the First Circuit Opinion that affirmed, but seemed to affirm in somewhat different, narrower grounds. Then the other two docket entries that I cited, 2322 and 2347, are after the remand.

So I would just ask you to look at those after these arguments, and by Wednesday, submit a letter if your position is any different as to whether there is a judgment that survived the appeal finding a taking.

MR. GONZALEZ-VALIENTE: Just one second, Your Honor. I was just taking notes. Sorry, Your Honor.

THE COURT: Thank you.

MR. GONZALEZ-VALIENTE: No. No problem. If I may go back to --

THE COURT: Yes.

MR. GONZALEZ-VALIENTE: -- argument, and thank you for the opportunity to brief this after.

As we have said, we have briefed this matter as thoroughly as we can, and we would like to point to a history of the takings claim and the Takings Clause --

THE COURT: Yes.

MR. GONZALEZ-VALIENTE: -- as taking property from private citizens for the benefit of the state. Especially in the case of political opponents, and minorities. This is a practice that takes to ancient times.

To give a few famous examples, in the Roman Republic, Lucius Cornelius Sulla, after being appointed dictator by the Senate, conscribed thousands of political opponents and unpopular nobles in order to take their property and rebuild the Republic's treasury.

King Philip of France famously combined with then current Avignon Pope and declared the Templars as heretics. He then had them all summarily executed in order to cripple their political power, avoid paying the substantial loans he owed them, and acquired whatever remaining assets they had.

This practice has continued in modern times. We only need to look to the pogroms of Czarist Russia, the persecution of minorities in Eastern Europe and Nazi Germany. All followed by the seizure of property for those persecuted, for the presumed benefits of the majority.

And this has happened right here in the United States. During the War of Independence, the English Crown consistently took both real and personal property from the revolutionary colonists. More pertinent to analysis, the revolutionary government itself took real property from

loyalists, in an estimated amount of 20 million dollars at that time, which, to put in context, was about ten percent of the land value of the colonies at the time. In fact, there were several states which had laws to instutionalize the confiscation of real and personal property of the loyalists.

Your Honor can look to *Horne v. Department of Agriculture*, 576 U.S. 341, for a brief history and summary of the Fifth Amendment.

Justice Thomas there relates that this principle dates back to the magna carta. He states it was, and I quote, codified in the Takings Clause in part --

(Sound played.)

MR. GONZALEZ-VALIENTE: -- because of the property appropriations by both sides during the revolutionary war.

James Madison, among others, proposed the Takings Clause in order to make sure that such abuses did not occur in America ever again. In truth, the Takings Clause, like the Bill of Rights, is an aspiration. It must live in the hearts of the people, or they will wither. The Framers obviously believed in this, and private property is essential to liberty. We must fight to protect the right to possess it, or it is lost.

Madison famously stated, where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his

possessions. Thus, a government is instituted to protect property of every sort.

One of the best expressions of the true value of property, respect, and freedom was offered by the escaped slave Frederick Douglass when he wrote, "to understand the emotion that swelled my heart as I grasped this money, realizing I had no master who could take it from me, that it was mine, that my hands were my own and could earn more of the precious coin, I was not only a freeman, but a free-working man, and no master Hugh stood ready at the end of the week to seize my hard earnings." From The Life and Times of Frederick Douglass, written by Justice Willett of the Supreme Court of Texas in *Patel v. Texas Department of Licensing*, 469 S.W.3d 69. This is an economic relations case -- regulations case. I'm sorry.

His follow-up words are also worth considering. "Frederick Douglass's irrepressible joy at exercising his hard-won freedom captures just how fundamental -- and transformative -- economic liberty is. Self-ownership, the right to put your mind and body to productive enterprise, is not a mere luxury to be enjoyed at the sufferance of governmental grace, but is indispensable to human dignity and prosperity."

Your Honor, I know that the --

THE COURT: You asked for a minute or two to

continue. I will give you up to two more minutes --

MR. GONZALEZ-VALIENTE: Okay. Thank you.

THE COURT: -- if you wish.

MR. GONZALEZ-VALIENTE: Yes. Yes, please.

We contend that the values of Madison's and the Framers are the source behind Justice Brandies' quote in *Louisville Joint Stock Land Bank v. Radford*, that no matter how great the nation's need, private property shall not be taken.

The Board would have those words be disregarded by the Court, because they were allegedly relevant only in the historical context of the Great Depression, but those words were quoted verbatim by Justice Brandeis -- by Justice Rehnquist in *U.S. v. Security Industrial Bank*, which was decided in 1982. And this is the same case in which Justice Rehnquist reaffirmed the earlier rulings in *Radford*, in such that the bankruptcy power is subject to the Fifth Amendment against taking private property without just compensation. The Framers obviously wanted to make sure that Mr. Bienenstock's example of school district did not occur.

Quoting Madison once again, it is not a just government, nor is property secure under it where property which a man has in his personal safety and personal liberty, is violated by an arbitrary seizure of one class of citizens at the -- for the service of the rest.

It is important to remember that, as opposed to other classes of creditors, takings claimants did not have a previous consensual relationship with the Commonwealth. They did not provide credit in the form of goods or services, nor did they loan money to the Commonwealth in the form of bonds.

Those that willingly entered into a relationship with the Commonwealth can reasonably expect to be effected in the event of a bankruptcy, but in the case of takings claimants, the Commonwealth in one way or another intruded into and affected claimant's property or property rights without their consent.

As Justice Roberts stated in *Knick v. Township of Scott*, in the event of a taking, the compensation remedy is required by the Constitution. No action by the government can relieve it from the duty to provide just compensation.

Therefore, we ask that the Court exercise its powers under section 944, and deem Suiza's claim as nondischargeable or, in the alternative, require the Board amend the Plan and the treatment in order to protect --

(Sound played.)

MR. GONZALEZ-VALIENTE: -- Suiza's claims.

Thank you, Your Honor.

THE COURT: Thank you, sir.

The next speaker is Mr. Sanchez-Girona, for MAPFRE.

MR. SANCHEZ-GIRONA: Thank you, Your Honor. Can you

hear me?

THE COURT: Yes, I can. I can't see you yet, but I can hear you.

MR. SANCHEZ-GIRONA: Okay. Can you see me now?

THE COURT: Yes, I can. Good afternoon.

MR. SANCHEZ-GIRONA: Good afternoon, Your Honor. On behalf of MAPFRE, Attorney Jose Sanchez-Girona.

In this case, MAPFRE filed two objections to the confirmation of the Plan. The objection under the PBA Plan was based on the fact that MAPFRE incurred losses of over nine million dollars in a project for the police headquarters in Ponce, Puerto Rico, and their surety bond to complete the project. And in that project, the Public Buildings Authority is holding $698,471 as retainage.

The objection under the Commonwealth Plan is that MAPFRE experienced losses of $5,299,331.89 in payments made in four projects, for four construction projects under surety bonds issued for those projects; and in those projects, the Commonwealth is holding $2,164,561.05 in retainages and unpaid progress payments.

As we have alleged in our memorandum of law, and in the claim filed by MAPFRE, pursuant to *Pearlman v. Reliance*, that's an opinion of the Supreme Court in 1962, and *Segovia v. Constructora Maza*, when the surety paid those amounts, the surety became entitled to those funds that have been retained

by the Commonwealth and by the PBA. Those funds are not property of neither the PBA or the Commonwealth. Therefore, pursuant to *Pearlman v. Reliance*, the Commonwealth or PBA are not entitled to distribute among the creditors property that doesn't belong to either PBA or the Commonwealth. That property, those retained funds belong to MAPFRE.

Pursuant to section 1122(a) of the Bankruptcy Code, the Oversight Board had the burden to prove that MAPFRE's claim is substantially similar to other general unsecured claims, because it classified MAPFRE's claims in both cases as an unsecured claim.

Your Honor, we respectfully submit that the Oversight Board did not meet that burden. Therefore, the Plan as presented doesn't comply with section 1122(a) of the Bankruptcy Code. Therefore, it shouldn't be confirmed.

The Oversight Board presented a proposed order whereby in paragraph 86 it states that, notwithstanding anything contained in the Plan to the contrary, to the extent that the claimant of and surety against any of the debtors is determined to be a secured claim, and allowed by final order, such claim shall be paid in full in cash.

Your Honor, our contention is that the time for the Oversight Board to comply with the Bankruptcy Code is not post confirmation of the Plan. The plan for them to -- I mean the time for them to comply with the provisions of the Bankruptcy

Code is now, is not six months after the effective date of the Order.

So we believe that such proposed language would not change the fact -- would not cure the defects of the Plan as presented. Therefore, our position is that the Plan either cannot be confirmed as submitted, or that the Court should deem as -- the insurers' claim as allowed and Order their payment in full.

THE COURT: Thank you, Mr. Sanchez-Girona.

MR. SANCHEZ-GIRONA: Thank you.

THE COURT: The next speaker is Mr. Almeida, for the Credit Unions.

MR. ALMEIDA: Good afternoon, Your Honor. Can you hear me well?

THE COURT: Yes, I can. Thank you. Good afternoon.

MR. ALMEIDA: Good afternoon. Once again, this is Attorney Enrique Almeida on behalf of the Credit Unions. I'm here to present the Credit Unions' argument and remarks in opposition to the confirmation of the Commonwealth's Plan of Adjustment.

During the last two weeks, we have heard arguments and evidence in favor and opposition to confirmation of the proposed Plan. Although we recognize the tremendous efforts of the Oversight Board, the mediation team, and other parties supporting the Plan in trying to attain the Plan's

confirmation in this complex case, we firmly submit this: As it currently stands, it's unconfirmable.

In essence, the Plan cannot be confirmed, because it proposes to discharge and reduce the Credit Unions' Takings Clause claims, which are personal takings, as well as regulatory categorical takings obtained by means of coercion against the Credit Unions. The particular facts and situation giving rise to the Credit Unions' Takings Clause claims were included in detail in the causes of action of Adversary Proceedings 18-28 and 19-389, pending to be adjudicated by the Court, and also in each of the Credit Union's Proofs of Claim that were filed in the *Commonwealth* case, which were not objected and are considered allowed.

The facts, these facts, the facts in the causes of action are summarized as follows. First, the Commonwealth, together with the GDB and COSSEC, adopted and enforced a regulatory policy to coerce the Credit Unions to hand over their cash in exchange for bonds that they knew were issued in insolvency, and, therefore, had substantially less value. By doing so, the government effectively took direct and physical possession of the Credit Unions' property without just compensation, and did so through the exercise of regulatory power.

The Commonwealth and its regulatory power -- used its regulatory power to coerce the Credits Unions. And here's the

most important part, the part that must be stressed and paid attention to. We're not talking about a voluntary purchase, sale, or possession of funds, nor a voluntary purchase, or transfer of instrument in exchange of money through a mere persuasion. As alleged in adversary case 18-28, we're dealing with coercion, forced retaliation, coercive regulatory power, and deceit. We shall not regularly present in the standard purchase and transaction of bonds. In this respect, the element of coercion in the situation is crucial.

Coercion has been recognized as a key factor when determining that a takings claim occurred and warrants compensation. And in support, we are citing the case of the Federal Circuit in 2014, it's *A&D Auto v. U.S.*, 748 F.3d 1142.

Now, in the instant case, the Commonwealth actions when enforcing the regulations to coerce the Credit Unions into obtaining Puerto Rico debt instruments were a direct assault on the Credit Unions' coffers to finance its operation when it was insolvent or on the verge of insolvency. That is precisely why these Takings Clause claims warrant just compensation and should not be discharged.

Second, COSSEC's use of the premiums paid by the Credit Unions, the Insurance Funds lack of adequate capital, and the Commonwealth's failure to adequately fund COSSEC in contravention of Act 14, also constitute a noncategorical regulatory taking that also warrants just compensation.

We submit that the Plan of Adjustment provides an unconstitutional treatment to the Credit Unions' claims in as much as it does not pay them in full, and lists them on the impaired class, where they will not receive full payment of their claims. Although Congress may authorize the Commonwealth under PROMESA to impair contractual and other claims pursuant to its bankruptcy power, it may not authorize the taking of private property without just compensation in violation of the Fifth Amendment.

And in the case of the Credit Unions, the claims are not mere contractual claims, but constitutional claims for a taking of their property by the government without just compensation, which occurred prior to the Commonwealth availing itself to the restructure or bankruptcy remedy under PROMESA.

So in light of the above, the Credit Unions respectfully submit the Plan of Adjustment cannot discharge the Credit Unions' claims without due process of law and just compensation pursuant to the Fifth Amendment of the Constitution. On the other hand, the Credit Unions submit that the Plan should not be confirmed, since it has not been proposed in good faith, as required by section 1129(a)(3) requirement applicable to the instant confirmation process by section 301 of PROMESA.

First, in as much as the Plan proposes to impair or

reduce the Credit Unions' takings claims, doing so in contravention of the Constitution, which is by definition forbidden by law. Second, when the Plan seeks a determination of exculpability and discharge and instrumentalities from all claims, particularly claims alleged in Adversary Proceedings 18-28 and 19-389, it is doing so without good faith and with the knowledge that it intentionally and willfully incurred in a dishonest behavior to the filing of -- prior to the filing of the petition. And now it's seeking to be forgiven by the restructuring process in PROMESA.

It is a well-settled legal and equitable principle in bankruptcy law that the discharge of debts is only granted to honest debtors. The Commonwealth and other related parties have not been honest with the Credit Unions. Quite the contrary. The Commonwealth and other instrumentalities should not be granted the discharge provided for in the Plan due to their lack of honesty and their fraudulent behavior to the Credit Unions.

Finally, we submit that the Plan of Adjustment should not be confirmed as it currently stands, because its provisions would further violate other Constitutional rights of the Credit Unions, particularly those regarding the due process of law and the First Amendment right to petition for redress of grievances.

The Credit Unions takings claims in Adversary

Proceedings 18-28 and 19-329 have not been reduced to judgment. As stated before, these are fact intensive constitutional claims, not mere collections or breach of contract claims. The claims in such cases are pending to be solved in litigation, and subject to the protections of the Takings Clause, and, thus, should not discharged in the instant bankruptcy proceeding.

Therefore, instead of the Commonwealth receiving discharge, exculpation, and releases in the Plan, the Court Order confirming the Plan should except from discharge the Credit Unions' claims in order for them to receive the full display of their due process of law. In light of the foregoing, Your Honor, the Credit Unions' move for denial of confirmation, or, in the alternative, for exception of discharge of their claims pursuant to 11 U.S.C. 944(c)(1).

And I thank the Court for giving us the opportunity to address these matters.

THE COURT: Thank you, Mr. Almeida.

The next speaker is Mr. Fallon, for Quest Diagnostics.

MR. FALLON: Good afternoon, Your Honor. Brett Fallon --

THE COURT: Good afternoon.

MR. FALLON: -- of Faegre, Drinker, Biddle & Reath, for Quest Diagnostics of Puerto Rico.

Quest Diagnostics is a named defendant in an avoidance action under the theory that there were certain prepetition, allegedly fraudulent transfers under the Bankruptcy Code, or allegedly unauthorized transfers under Puerto Rico law. We did file a limited objection at docket no. 18560.

Our concern was the Plan and initial proposed Confirmation Order could have been interpreted to eliminate or purport to eliminate two things. One is certain of Quest's defenses in the adversary proceeding, such as defense of set off, recoupment, and other affirmative defenses. And, two, the 502(h) and Bankruptcy Rule 3002(c)(3) claim that an avoidance defendant would have if such defendant were to return some or all of such transfers.

Now, we are pleased to report to the Court that after discussions there is a paragraph 56(g) added to the Confirmation Order that was filed last night that preserves our defenses in the adversary proceeding, and in the event we have to return funds pursuant to a judgment, or we agree to return funds in any settlement, paragraph 56(g) of the Confirmation Order preserves our right to file and receive payment on any 502(h) claim filed pursuant to Bankruptcy Rule 3002(c)(3). So our objection is resolved with the addition of that paragraph.

I want to thank the Oversight Board's counsel in

working through and resolving that, and for Your Honor's time today. And I'm happy to cede any of my additional time to any of the other speakers that didn't have an opportunity to finish.

THE COURT: Thank you, Mr. Fallon.

The next scheduled speaker is Mr. Silverman, for U.S. Bank.

MR. SILVERMAN: Thank you. Good afternoon, Your Honor. Are you able to see me?

THE COURT: Yes, I am. Good afternoon.

MR. SILVERMAN: Thank you, Your Honor. Good afternoon. For the record, it's Ronald Silverman from Hogan Lovells, counsel to U.S. Bank, both U.S. Bank Trust National Association and U.S. Bank National Assocation.

Your Honor, we are listed on the schedule of the Agenda for opposing parties. I am happy to report that we are no longer opposing parties. Your Honor will remember that U.S. Bank filed two objections to the Plan. One was a limited objection in respect of its role as PBA Fiscal Agent and PRIFA Trustee. Upon receipt of the revised Confirmation Order last night, we see that our concerns have been consensually resolved, and that resolves the limited objections.

Your Honor, we also filed as PFC Trustee an objection with respect to the Plan. Your Honor will recall last Wednesday that Mr. Rosen stated to the Court that an agreement

had been reached to resolve our objection, and a term sheet for terms of resolution has been approved by the FOMB Board.

Last Wednesday Ms. DiConsa, on behalf of AAFAF, also stated on Wednesday that AAFAF management's approval of the terms of the deal and the term sheet had been approved as well. And the resolution of the objection comes via a Title VI proceeding to be implemented for PFC, as was mentioned last week.

Very briefly, the key economic terms of the Title VI resolution involve, first, that PFC can obtain a discharge of PFC's Bonds via a Title VI order and proper proceeding, and, in addition, the PFC Trustee will receive the following: 12.5 million dollars in a cash payment. It will also receive bonds pursuant to the indenture already approved in the GDB Qualifying Modification, in the approximate amount of 47.69 million dollars, to give effect to the PFC Trustee's claims to GDB in amounts that are already referenced in the GDB Qualifying Modification. And, third, that PFC's claim to the PET, in the approximate amount of 28 million dollars, will be allowed and assigned to PFC via the PFC Title VI.

(Sound played.)

MR. SILVERMAN: Your Honor, there are other customary and ancillary terms, but the points that I mentioned are the headlines. And, Your Honor, in terms of process, as agreed by the parties, in order to effectuate the Title VI for PFC, the

PFC Trustee and the supporting holders have proposed in writing a modification for PFC under Title VI pursuant to the agreed term sheet. And we requested that the FOMB certify the modification pursuant to PROMESA 601, as a qualifying modification for PFC.

The purpose of this is that the qualifying modification for PFC may move forward either as initial response to a qualifying modification or as a qualifying modification certified by the FOMB as the administrative supervisor under PROMESA. And a result of this agreement, the PFC Trustee's objection to the Plan is consensually resolved, Your Honor.

THE COURT: Thank you, Mr. Silverman.

I see that Mr. Bienenstock has his hand up.

MR. ROSEN: Your Honor, it's actually Brian Rosen.

THE COURT: Masquerading as Mr. Bienenstock.

MR. ROSEN: Hold on.

THE COURT: I'm not going there.

MR. ROSEN: That was too easy, Your Honor. I'm sorry.

Your Honor, I apologize for breaking in, and I appreciate that Mr. Silverman really wanted to put those terms on the record, but as we heard last week, that it had only been approved by AAFAF management. It had not gone to the PFC Board. It had not gone to the AAFAF Board. And the Oversight

Board was very reluctant to disclose any of those terms, because there was no approval, and we were concerned about material and nonpublic information being disclosed.

Mr. Silverman has done what he has done, Your Honor. We cannot say whether or not those boards will approve this at this time. So it is what it is, and we just wanted that out there, Your Honor.

THE COURT: Thank you.

So now Mr. Steel for the Underwriters is the last scheduled opposition speaker.

MR. STEEL: Thank you, Your Honor. Good afternoon. Howard Steel of Goodwin Procter, on behalf of the Underwriter defendants.

I'll continue the streak, Your Honor. We have consensually resolved our objection. The revised Plan and modified Confirmation Order include the agreed language to preserve the Underwriter defendants' rights, though we're pleased to report we're not pressing a confirmation objection.

Offline, during the course of this proceeding, Ms. DiBlasi, counsel for National, has requested a further edit that can form the Plan to the language in the Confirmation Order. There's a slight inconsistency. And, just for the record, we don't object to that specific edit. And I believe the Debtors --

COURT REPORTER: I'm sorry, Your Honor.

THE COURT: Yes. Mr. Steel, you're breaking up, and the court reporter couldn't hear you, so can you backtrack by a couple of sentences, please?

MR. STEEL: Sure. I was saying that Ms. DiBlazi, counsel for National, requested a further edit to conform the Plan to the Confirmation Order. And we do not object to that specific edit, and believe that it's amenable to the debtors as well. And I'll let them address it during their rebuttal.

With that, Your Honor, our objection is consensually resolved, and I conclude by thanking the Court and the court staff.

THE COURT: Thank you, Mr. Steel.

It is now almost 25 past 5:00 Atlantic Standard Time, 4:25 New York time, and so it is clear that we will not be able to finish all of the arguments today. So what we will do is resume with the rebuttal by the Oversight Board tomorrow morning, and then go on to the -- to address the two Title VI proceedings.

Mr. Rosen? You have your hand up.

MR. ROSEN: Yes, Your Honor. I do, Your Honor, and I apologize again for interrupting.

As Your Honor knows, we've arranged for Ms. Pullo to be available. Ms. Pullo, as the solicitation agent in connection with both the CCDA and the PRIFA Title VI proceedings, she is here in our offices today and available

for any questioning that the Court has. As the Court knows, because I assume that you and your staff have looked at the declarations, both of those solicitations were overwhelmingly approved, 100 percent in the CCDA, and I believe in the high 80s or 90s percent with respect to the PRIFA solicitation process.

No objections have been interposed at all with respect to those, although there was a reservation of rights. I say this, Your Honor, because Ms. Pullo does have conflicts tomorrow, and may not be available, and certainly on-site not available. We might be able to do her remotely if that works out, Your Honor. I don't know what her schedule is.

So I just ask the Court's indulgence, and ask you what you would like to do with Ms. Pullo's availability for the two Title VI proceedings.

THE COURT: Well, I do not have questions for Ms. Pullo. Let me ask now if anyone who is in attendance now, who has an interest in the CCDA or PRIFA Title VI proceedings, who has not given notice of an intention to cross-examine, nonetheless wants to express it at this time, a desire to cross-examine Ms. Pullo, raise your hand. I'm going to wait 30 seconds to see if any hand gets raised.

Mr. Samodovitz has raised his hand. Mr. Samodovitz?

MR. SAMODOVITZ: Yes. As mentioned, Peter Hein had to leave for another commitment. I don't know if he has an

interest in cross-examining Ms. Pullo, but can you reserve a few minutes for him in case he does?

MR. ROSEN: Your Honor, Mr. Hein is not a creditor of PRIFA. He owns GO and PBA Bonds only.

THE COURT: That is my understanding as well. He has not made any filings in connection with PRIFA, and so I deny the request to reserve time for Mr. Hein to cross-examine in connection with the PRIFA Title VI.

MR. ROSEN: Your Honor.

THE COURT: Yes, Mr. -- I'm sorry. Which one of you is speaking? I think that was Mr. Rosen.

MR. ROSEN: Yes, Your Honor. I was just going to say with that as a base, Your Honor, we can either wait until tomorrow to formally offer into evidence the declarations in each of those Title VI proceedings, or we can do it today, whatever the Court prefers.

THE COURT: Let's wait until tomorrow, and do it in order, because I'm going to have a separate section of the transcript begun for the Title VI proceedings. I can't imagine, based on what we have just done, that there will be a need for Ms. Pullo, but it would be helpful if you had a phone number for her just in case something came up.

MR. ROSEN: We will do so, Your Honor. Thank you very much.

THE COURT: Thank you.

MR. ROSEN: Thank you.

THE COURT: So we are adjourned to 9:30 tomorrow morning Atlantic Standard Time, 8:30 AM Eastern Standard Time.

There's another hand raised. Okay. Mr. Capdevila, from Finca Matilde.

MR. CAPDEVILA-DIAZ: Your Honor, since the closing, the rebuttal of the Board is due tomorrow, not today, I have a hearing tomorrow morning, and I would like Finca Matilde to be represented. But there is another attorney from the same law firm, so I know the scheduling says it is to be me, but I'm telling the Court -- asking if it would be okay for my boss to be present, Isabel Fullana, counsel of record, and she has cosigned all the objections with myself.

THE COURT: Yes. That is fine. Would you tell me her name again?

MR. CAPDEVILA-DIAZ: Isabel Fullana, F-u-l-l-a-n.

THE COURT: Fullan.

MR. CAPDEVILA-DIAZ: No, F-u-l-l-a-n-a.

THE COURT: Ah, okay. Thank you. Fullana. Thank you. That is fine. So she will come in on your link, is that what you're expecting?

MR. CAPDEVILA-DIAZ: Yes. Yes, Your Honor.

THE COURT: All right. So we will know to look for that. Thank you.

MR. CAPDEVILA-DIAZ: Thank you.

THE COURT: Thank you.

So with that, we are adjourned to tomorrow morning. Keep well, everyone. I look forward to seeing you tomorrow morning.

(At 5:24 PM, proceedings concluded.)

* * *

U.S. DISTRICT COURT)

DISTRICT OF PUERTO RICO)

I certify that this transcript consisting of 232 pages is a true and accurate transcription to the best of my ability of the proceedings in this case before the Honorable United States District Court Judge Laura Taylor Swain, and the Honorable United States Magistrate Judge Judith Gail Dein on November 22, 2021.

S/ Amy Walker

Amy Walker, CSR 3799

Official Court Reporter